

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>ITEM No.</b>	
<b>FILE No.</b>	DA 384/2012/1
<b>PROPERTY DETAILS</b>	2 Laguna Street, Vacluse (former Vacluse High School site)  <b>Lot &amp; DP No.:</b> LOT: 1554 DP: 820600 <b>Side of Street:</b> North-western side of Old South Head Rd North-eastern side of Laguna St <b>Site Area (m<sup>2</sup>):</b> 12,030 <b>Zoning:</b> Special Uses Existing (School)
<b>PROPOSAL:</b>	Demolition of the existing former Vacluse High School buildings and the construction of a Seniors Housing Development comprising a 227 bed residential care facility, 3 x 1 & 11 x 2 bedroom self-contained dwellings (serviced self-care housing), associated services, 99 basement parking spaces, landscaping and siteworks
<b>APPLICANT:</b>	Thinc Projects Australia Pty Ltd
<b>OWNER:</b>	Norwent 3 Pty Ltd
<b>DATE LODGED:</b>	10/09/2012
<b>AUTHOR:</b>	David Booth-Senior Assessment Officer
<b>CONSENT AUTHORITY</b>	Joint Regional Planning Panel (JRPP)

### 1. LEVEL OF DELEGATION

The Joint Regional Planning Panel is the consent authority for this development application as the application is for development that has a capital investment value of more than \$20 million (\$93.5 million).

### 2. RECOMMENDATION

Conditional approval.

### 3. BACKGROUND

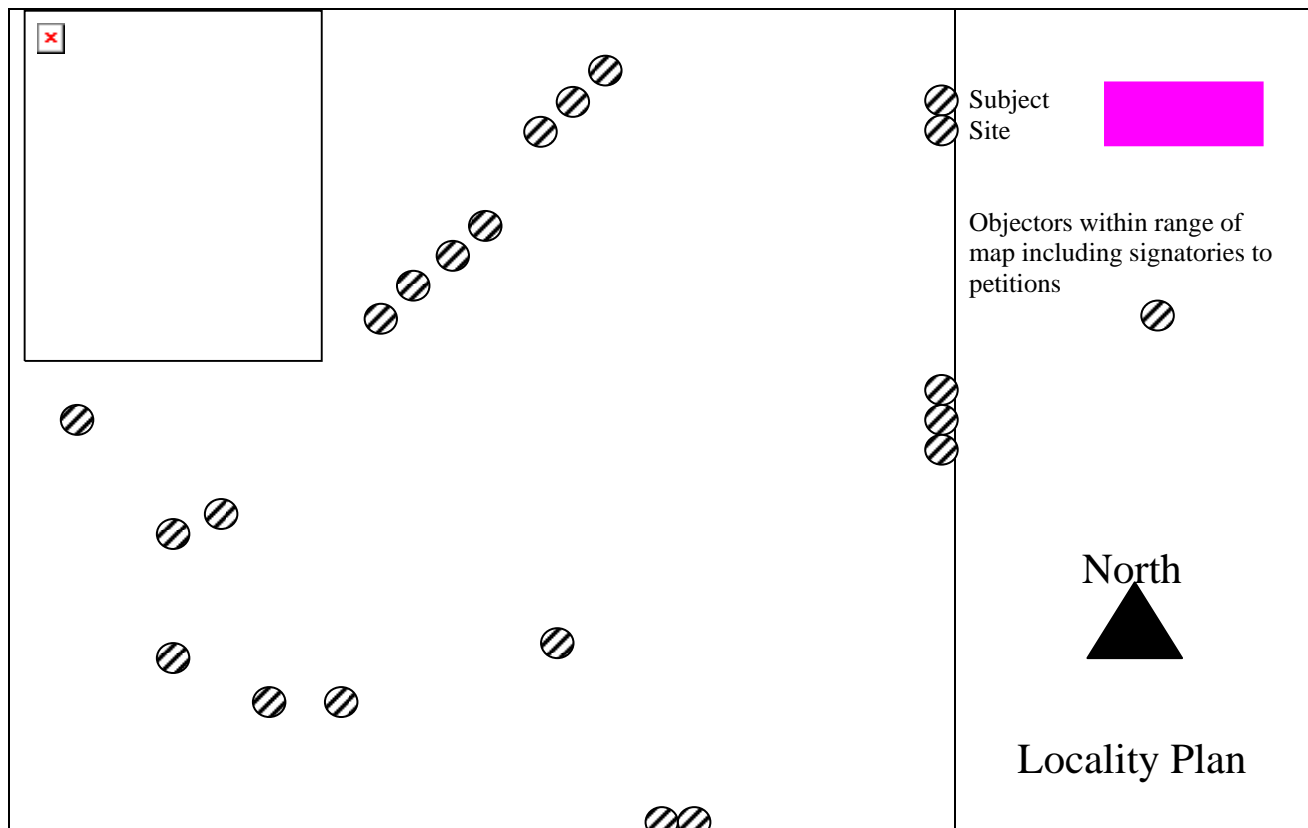
In early 2007 the Vacluse High School site was sold by the NSW State Department of Education with a covenant requiring that redevelopment of the site is to be limited to seniors housing.

On 28 July 2008, DA813/07 for the demolition of the existing school buildings and the construction of a seniors living development consisting of 78 self-contained dwellings, 1 manager's dwelling, staff facilities, communal facilities, 102 off-street car parking spaces and landscaping was approved by the full Council. The approval involved the support of a SEPP 1 objection to vary Council's 9.5

m height development standard to approximately 15.3 m. The issue of public interest was fundamental to Council supporting and approving the application.

On 17 December 2010, a S.96 application (DA813/07/2) was approved for internal and external modifications including increasing the number of dwellings from 79 to 99 and car parking spaces from 102 to 175. The development consent, as modified, involved a building height of approximately 15 m (4 storeys) and a floor space ratio of approximately 1.43:1. Again, the issue of public interest was fundamental to Council supporting and approving the S.96 application.

#### 4. LOCALITY PLAN



#### 5. PROPOSAL

The driveway crossing was amended on 21 December 2012 so as to be perpendicular to the Laguna Street alignment (rather than splayed) in order to address concerns raised by Council's Urban Design Planner in relation to pedestrian comfort and safety.

Further amendments were submitted to Council on 1 February 2013 to address concerns raised by Council's Urban Design Planner in relation to improving the general public accessibility to and the utility of the lower and upper plazas off Laguna Street and to delineate borders between these publicly accessible areas and the communal open space areas further to the north east that will be accessible only to occupants of the development, their visitors and staff.

The proposal is for a Seniors Housing Development comprising:

- Building 1- a large, split level building occupying the southern and south-eastern sections of the site with a primary frontage to Old South Head Road and a secondary frontage to Laguna Street containing a 227 bed Residential Care Facility (RCF).

The south-western half of this building consists of 6 levels; one below-ground Basement Level containing car parking, plant rooms and services including a large kitchen and laundry; four full-size above-ground levels containing a chapel at Ground Floor level, a communal dining, kitchen and living area at each level, a nurses station and activity area at each level and 107 individual beds (the uppermost of these levels-Level 2 containing 17 larger style "suite" rooms); and a part sixth level (Level 3) fronting Old South Head Road containing a gymnasium and loggia (a covered roof top landscaped area with open sides). The remainder of Level 3 (the roof to Level 2) contains skylights, extensive garden planters with pathways and deck, a mini-golf course and a bowling/croquet green.

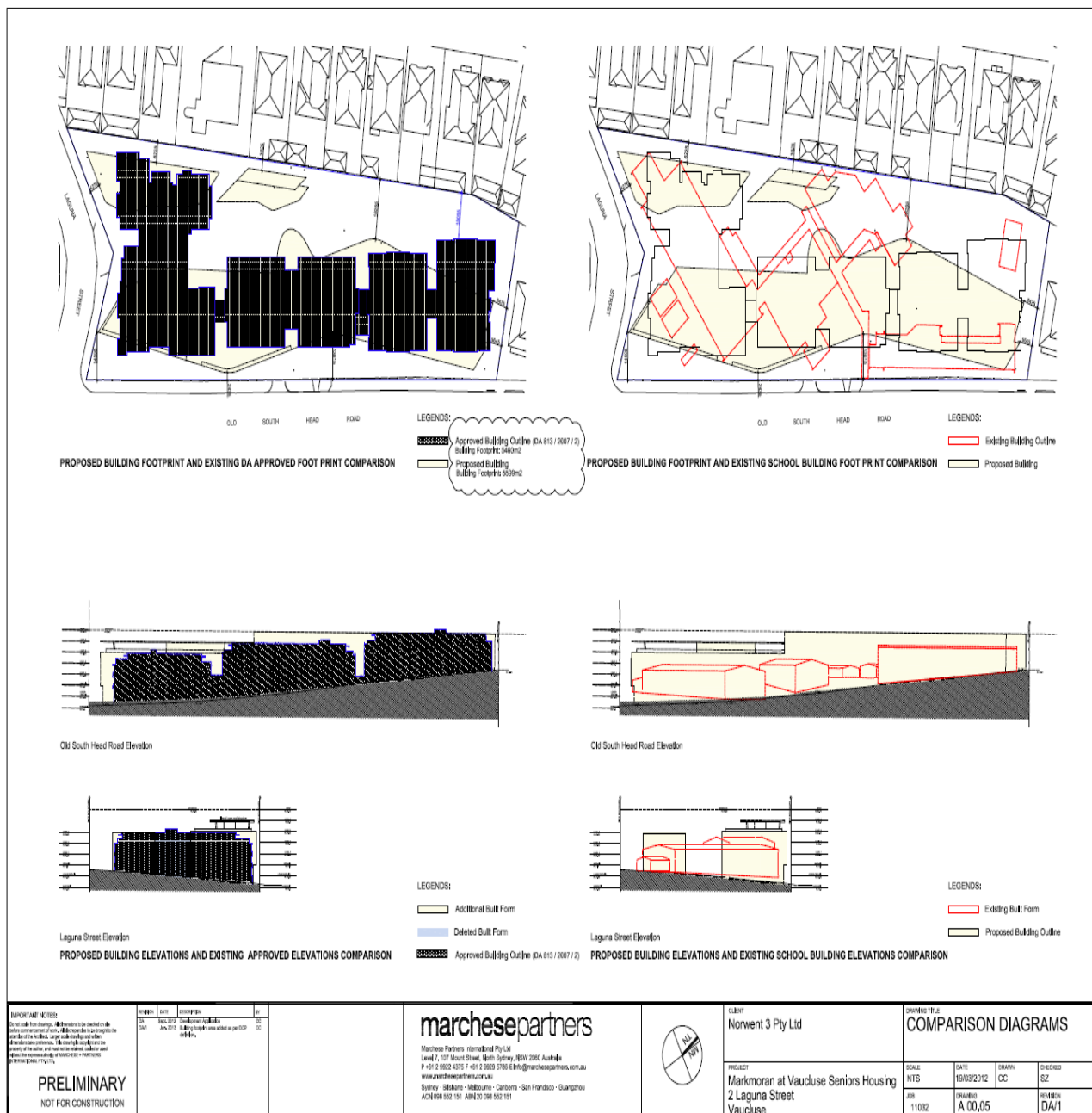
The north-eastern half of this building consists of 7 levels; 2 below-ground levels containing car parking, plant rooms and services including a pool and cinema; and five above-ground levels containing a large communal lounge/atrium, bar, reception area, hair salon, wellness centre, media centre at Ground Floor level and 120 individual beds (the uppermost of 2 levels (Levels 3 & 4) containing 36 larger style "suite" rooms). An open mechanical plant area concealed behind metal and glass screens is proposed to the central section of Building 1 at Level 4 adjacent to the Old South Head Road frontage. The non-trafficable flat roof contains skylights.

- Building 2- a medium sized 5 level building occupying the western corner of the site with a frontage to Laguna Street containing one fully below-ground Basement Floor Level containing part of the carpark ramp and services; a partially excavated Lower Ground Floor level containing part of the carpark ramp, a beauty salon, a medical consulting room and plant rooms and three above-ground levels containing 3 x 1 and 11 x 2 bedroom serviced self-contained dwellings (SSCDs) at Ground Floor Level, Level 1 and Level 2.
- Building 3- a smaller, 2 level building occupying the central section of the north-western side of the site containing one below-ground Lower Ground Floor Level containing part of the carpark ramp and 1 above-ground Ground Floor level with clerestory containing a kitchen and communal dining and activity rooms.
- The basement car parking is spread over 2 levels, accessed from both Laguna St and Old South Head Rd, accommodating 99 cars including 4 disabled spaces, an ambulance bay and 2 minibus spaces. Vehicles are only able to exit the car park from the Laguna Street frontage.
- All of the proposed facilities will be accessible to all occupants.
- A porte cochere is proposed to the Old South Head Rd frontage.
- 1.2 m high sandstone clad front retaining walls are proposed to both street frontages;
- The centre of the site contains landscaped open space areas including a water feature, lower and upper paved "plazas", a playground, 3 courtyards and a communal garden.
- The proposal involves substantial site works involving extensive excavation to accommodate the Basement and Lower Ground Floor levels and approximately 1 m of fill adjacent to part of the the north-western elevation of Building 2 and adjacent to the south-western section of the Old South Head Road Elevation of Building 1.
- Extensive landscaping works including the removal of a substantial number of trees from the site and extensive replanting. A significant Norfolk Island Pine tree adjacent to the Laguna Street frontage; and a group of 4 significant trees adjacent to the section of the north-western

boundary adjacent to the rear boundaries of 121 and 123 New South Head Road will be retained.

- Landscaping works are also proposed to the sections of Council's footpath adjacent to the Old South Head Rd and Laguna St frontages involving new paving and new/upgraded landscaped verges including new street tree plantings;
- The traffic report submitted with the development application states that the proposed development would involve a maximum of 12-70 staff on duty at any one time.

The following diagrams indicate the differences in the building envelopes between the proposal, the approved development and the existing situation:



The proposed building envelope differs from the previously approved seniors living development (DA813/07/2) in the following key areas:

### Floor space ratio

As approved (DA813/07/2)	Approximately 1.43:1 (17,223 m <sup>2</sup> )
Subject proposal	Approximately 1.81:1 (21,750 m <sup>2</sup> )

### Maximum height/number of storeys

As approved (DA813/07/2)	15 m (4 storeys above-ground)
Subject proposal	18.4 m (5 storeys above-ground)

### Building footprint

As approved (DA813/07/2)	Approximately 45.4% (5460 m <sup>2</sup> )
Subject proposal	Approximately 46.5% (5600 m <sup>2</sup> )

## 6. ISSUES

- Objectors' concerns;
- Height non-compliance (subject of a SEPP 1 objection);
- Number of storeys non-compliances;
- Old South Head Road front and rear boundary setback non-compliances;
- Excavation boundary setback non-compliance; and
- Underground car parking excavation beyond the building footprint non-compliance.

## 7. SEPP 1 Objection

Clause in Woollahra LEP	Standard	Departure from Control	Satisfactory/Unsatisfactory
Clause 12	9.5 m height of buildings	9m/95%	Satisfactory

## 8. REFERRALS

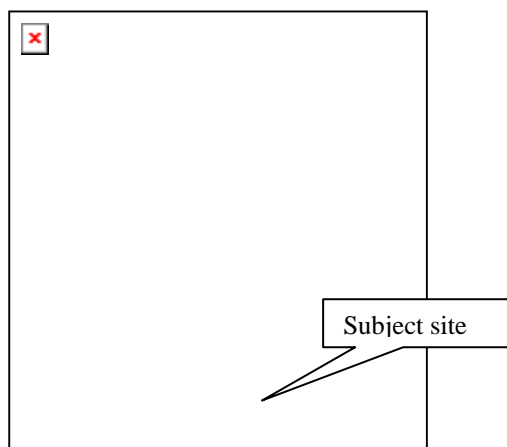
Internal Referral Officer	Comment	Annexure
Development/Traffic Engineers	Council's Development and Traffic Engineers have determined that the proposal is satisfactory, subject to conditions.	2
Tree and Landscape Officer	Council's Tree and Landscape Officer has determined that the proposal is satisfactory, subject to conditions.	3
Heritage Officer	Council's Heritage Officer has determined that the proposal is satisfactory.	4
Community Services	Community Services supports the application as it is anticipated it will encourage older adults to remain living locally, will encourage independent living and reduce the risk of social isolation.	5
Environmental Health Officer	Council's Environmental Health Officer has determined that the proposal is satisfactory, subject to conditions.	6
Fire Safety Officer	Council's Fire Safety Officer has determined that the proposal is satisfactory, subject to conditions.	7
Urban Design Planner	Council's Urban Design Planner has determined that the proposal is satisfactory, subject to conditions.	8
Environment and sustainability	Council's Team Leader-Environment and Sustainability is of the opinion that the proposal will achieve a good ESD outcome.	9

External Referral Body	Reason for referral	Comment
Roads and Maritime Services	Section 138 of the Roads Act 1993	The proposal is satisfactory, subject to a number of requirements addressed by <b>Condition A.5</b> (see <b>Annexure 10</b> ).
NSW Police	CPTED principles	No response provided.

## 9. DESCRIPTION OF SITE OF LOCALITY

The subject site has an area of 12,030 m<sup>2</sup>, a south-eastern frontage to Old South Head Road 184.5 m in length, a south-western frontage to Laguna St 84 m in length, a north-western (rear) boundary adjoining New South Head Road properties 206.2 m in length and a north-eastern side boundary 49.1 m in length. The subject land falls approximately 9.6 m from the north-east to the south-west and 1.9 m from the north-west to the south-east. The site is currently occupied by a series of 1-3 storey buildings associated with the former Vaucluse High School.

Adjoining properties to the north-west (105-129 New South Head Road) are occupied by 2 storey residential flat buildings and single dwellings, most with garage structures on the common boundary. The adjoining properties to the north-east (110-112 Old South Head Road) occupied by a pair of 1-2 storey semi-detached dwellings. South Head Cemetery is located on the opposite side of Old South Head Road. Development on the opposite side of Laguna St and Old South Head Road (to the south of the cemetery) consists of a mixture of 2-3 storey residential flat buildings and 1-2 storey dwelling-houses.



## ENVIRONMENTAL ASSESSMENT UNDER S.79C

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 include the following:

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

10. Any submissions
11. The public interest

## **10. ADVERTISING AND NOTIFICATION**

### **10.1 Submissions**

In accordance with Parts 3 and 4 of the Woollahra Advertising and Notification DCP, the development application was notified extensively and advertised from 19/09/2012 to 18/10/2012. Submissions (all objections) were received from:

1. N Stavrou-103D New South Head Rd/PO Box 541 Vacluse;
2. E Solomovic-49/31-39 Diamond Bay Rd, Vacluse;
3. M McLeish-10 Village Lower Rd, Vacluse;
4. D Cohn-11/12 Tower St, Vacluse;
5. J Rychter-1 Tower St, Vacluse;
6. R Hitchen-3/105 New South Head Rd, Vacluse;
7. Y Shuchat-1/2A Burge St, Vacluse;
8. N & S Akamas-16/16 Diamond Bay Rd, Vacluse;
9. Dr R & L Tockar-192 Old South Head Rd, Vacluse;
10. C Wilson- 9 Jensen Ave, Vacluse;
11. E van Aalst- [erickaunsw@gmail.com](mailto:erickaunsw@gmail.com) on behalf of the Save Christison Park Action Group;
12. G Flannery- [garethpf@gmail.com](mailto:garethpf@gmail.com) on behalf of 33 signatories;
13. L Kovacs-16 Young St, Vacluse;
14. L Gellert-7 Macdonald St, Vacluse;
15. O Kemp-3/2 Clarke St, Vacluse;
16. M Galper-5 Laguna St, Vacluse;
17. M Swift-13 Serpentine Pd, Vacluse;
18. S Flannery- [sal.flannery@gmail.com](mailto:sal.flannery@gmail.com) 2/121 New South Head Rd, Vacluse;
19. E van Aalst- [erickaunsw@gmail.com](mailto:erickaunsw@gmail.com) on behalf of the Save Christison Park Action Group and 42 signatories;
20. H Brodaty- [h.brodaty@unsw.edu.au](mailto:h.brodaty@unsw.edu.au) -Director, Dementia Collaborative Research Centre University of New South Wales Sydney 2052 and Director, Aged Care Psychiatry Prince of Wales Hospital, Avoca Street Randwick 2031 and owner of 33 Olphert Ave, Vacluse;
21. J Kaye-35 Olphert Ave, Vacluse;
22. F & W Vasili-1/107 New South Head Rd, Vacluse;
23. J & E Simon-1-3 Laguna St, Vacluse;
24. S & R Dwyer-3/121 New South Head Rd, Vacluse;
25. I & R Denton-4 Serpentine Pd, Vacluse;
26. D Brikcius-3/115 New South Head Rd, Vacluse;
27. J & P Podzebenko-16 Village Lower Rd, Vacluse;
28. J Dunn-2/72 New South Head Rd, Vacluse;
29. The Vacluse Progress Association-PO Box 29, Vacluse 2030;
30. W Bracey-143 New South Head Rd, Vacluse;
31. B Ambrose-143 New South Head Rd, Vacluse.

The submissions raised the following issues:

- *Construction management issues*

Council's Development and Traffic Engineers consider the proposal to be satisfactory in terms of construction management issues subject to the submission, approval and compliance with a construction management plan and works construction zone (see **Conditions D.4, D.5 & E.3**).

- *Traffic, parking, vehicular access and pedestrian safety related concerns*

The proposal provides a total of 99 car parking spaces including 1 ambulance bay. This complies with the requirement of 72 spaces including 1 ambulance bay as stipulated by Clauses 48 and 50 of SEPP (Housing for Seniors or People with a Disability) 2004. **These clauses prevent the refusal of the application on car parking grounds if the stipulated requirements are met.**

Specifically, the car parking requirements are:

- 1 parking space for each 10 beds in the residential care facility- $227 \times 0.1 = 23$  spaces;
- 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time- $70 \times 0.5 = 35$  spaces;
- 1 parking space suitable for an ambulance; and
- 0.5 car spaces for each bedroom of the self-contained dwellings where the development application is made by a person other than a social housing provider- $25 \text{ beds} \times 0.5 = 13$  spaces.

Total-72 spaces.

Council's Traffic and Development Engineers consider the proposal to be satisfactory in terms of traffic, parking, vehicular access and pedestrian safety related issues, subject to the provision of a signalised pedestrian crossing to New South Head Road, the provision of shelter to 2 existing bus stops and the reduction to driveway widths (see **Conditions C.6 & F.12**) (refer to section **Clause 38 Accessibility** of the report for a more detailed consideration).

- *Excessive height, bulk and scale/unsatisfactory architectural design that is visually incompatible with the character of the locality*

Council's Urban Design Planner considers the height, bulk, scale and the architectural design of the proposal to be compatible visually within the local context as viewed from the public domain; principally the streetscapes of Old South Head Road and Laguna Street. Further, the height, bulk and scale of the proposal as presented to adjoining properties is considered to be satisfactory (refer to section **12 SEPP 65-Design Quality of Residential Flat Development** and **13 SEPP (Housing for Seniors or People with a Disability) 2004 Clause 33 Neighbourhood amenity and streetscape** of the report for a more detailed consideration of these issues).

- *Overshadowing to neighbouring properties and poor positioning/orientation of the buildings and associated solar access, energy efficiency and internal amenity concerns*

Council's Urban Design Planner and Team Leader-Environment and Sustainability consider the proposal to be satisfactory in terms of orientation, solar access, energy efficiency and internal amenity. Solar access will be maintained to adjoining properties in accordance with Council's requirements. (Refer to section **12 SEPP 65-Design Quality of Residential Flat Development Principle 5: Resource, energy and water efficiency** and **13 SEPP (Housing for Seniors or People with a Disability) 2004 Clause 35 Solar access and design for climate** of the report for a more detailed consideration of these issues).



- *Loss of natural light and ventilation*

The proposal will not have any significant impact upon natural light and ventilation to adjoining properties due to adequate distances of separation.

- *Loss of visual and acoustic privacy to adjoining properties*

The proposal is considered to be satisfactory in terms of visual privacy impacts upon adjoining properties subject to the **Condition C.1a** requiring the privacy treatment of a number of windows to Building 2. The proposal is considered to be satisfactory in terms of acoustic visual privacy impacts upon adjoining properties subject to **Conditions** recommended by Council's Environmental Health Officer. (Refer to the section **13 SEPP (Housing for Seniors or People with a Disability) 2004-Clause 34 Visual and acoustic privacy** of the report for a more detailed consideration of these issues).

- *Loss of trees and open space, impact on wildlife, inadequate landscaped area*

Subject to **Conditions A.8 & B.1-B.3**, Council's Tree and Landscape Officer considers the proposal to be satisfactory in terms of impact upon significant trees (refer to section **12 SEPP 65-Design Quality of Residential Flat Development Principle 6: Landscape** of the report for a more detailed consideration). Due to the retention of significant trees and the extensive additional native species landscaping proposed, no significant adverse impact upon wildlife is envisaged.

The proposal is considered to be satisfactory in terms of the provision of landscaped area (refer to sections **13 SEPP (Housing for Seniors or People with a Disability) 2004-Clause 48 Standards that cannot be used to refuse development consent for residential care facilities and Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings** of the report).

- *General public accessibility to the site/security implications to adjoining properties*

Residents of adjoining New South Head Road properties to the north-west are concerned that general public accessibility to the site will compromise their security. The amended landscape plan submitted to Council on 30 January 2013 to address concerns raised by Council's Urban Design Planner included the provision of gates. The gates will limit public access to the lower and upper plazas off Laguna Street and will prevent access to the communal open space areas further to the north-east that will be accessible only to occupants of the development, their visitors and staff.

It is considered that these amendments will act as an adequate barrier to the general public accessing the north-western boundary of the site and the adjoining properties. Further, the proposal will facilitate high levels of casual surveillance of the open space areas which will reinforce the security of adjoining properties.

- *Loss of views*

The proposal will not have any significant impact upon public or private views (refer to section **18.3 Views performance criteria** of the report for a more detailed consideration).

- *Insufficient consultation /public meeting requested*

Public consultation for a private development proposal is an initiative that only the applicant can undertake and is therefore considered to be an issue that is beyond the scope of this report.

## Stormwater drainage

Council's Development Engineer considers the proposal to be satisfactory in terms of site drainage subject to the **Conditions C.6 & C.13**).

## 10.2 Statutory Declaration

In accordance with Clause 4.5 of the Woollahra Advertising and Notification DCP, the applicant has completed the statutory declaration dated 07/01/2013 declaring that the site notice for DA384/2012 was erected and maintained during the notification period in accordance with the requirements of the DCP.

## 10.3 Renotification

The amended landscape plans lodged on 21/12/2012 and 1/2/2013 amending the driveway crossing and landscape design of the central plazas were not renotified under Clause 5.1 of the Advertising and Notification DCP because, having considered Clause 9 of the DCP, the amendments were considered to have no greater environmental impact upon neighbours.

## 11. Compliance tables

### 11.1 SEPP 65-Design Quality of Residential Flat Development

Site Area (12,030 m <sup>2</sup> )	Proposed	Control	Complies
Minimum Floor to Ceiling Height – Habitable Rooms (m)	2.7	2.7*	<b>YES*</b>
Minimum Floor to Ceiling Height – Non-habitable Rooms (m)	2.7	2.4	<b>YES*</b>
Apartment Area-Internal (m <sup>2</sup> )	78 (1 bed) 110-124 (2 bed)	63.4 (1 bed) 89-121 (2 bed)	<b>YES*</b> <b>YES*</b>
Apartment Area-External (m <sup>2</sup> )	7 (1 bed) 11-37 (2 bed)	10 (1 bed) 11-33 (2 bed)	<b>NO*</b> <b>NO*</b>

\* Clause 30A standards that cannot be used as grounds to refuse development consent for residential flat buildings

### 11.2 SEPP (Housing for Seniors or People with a Disability) 2004

Site Area (12,030 m <sup>2</sup> )	Existing (Former High School)	Proposed	Control	Complies
Building Heights max (m)	Approx. 10.9	18.4	8*/**	<b>NO*/**</b>
Site Area (m <sup>2</sup> ) Frontage (m)	12,030 84-184.5	12,030 84-184.5	1000 20	<b>YES</b> <b>YES</b>
Floor Space Ratio	Approximately 0.5:1 (6015 m <sup>2</sup> )	1.81:1 (21,750 m <sup>2</sup> )	1:1* (12,030 m <sup>2</sup> ) 0.5:1** (6015 m <sup>2</sup> )	<b>NO*</b> <b>NO**</b>

Site Area (12,030 m <sup>2</sup> )	Existing (Former High School)	Proposed	Control	Complies
Landscaped Area	Unknown	33.4% (4020 m <sup>2</sup> )	5675 m <sup>2</sup> * 30% (3609 m <sup>2</sup> )**	<b>NO*</b> <b>YES**</b>
Deep Soil Zone	30.8%	17.9% (2151 m <sup>2</sup> )	15% ** (1805 m <sup>2</sup> )	<b>YES**</b>
Solar Access to North-Facing Living Rooms and Private Open Space Areas of Self-Contained Dwellings	N/A	>3 hours 78% of dwellings	>3 hours 70% of dwellings**	<b>YES**</b>
Car Parking	Unknown	99 total including 1 ambulance bay	72 total including 1 ambulance bay */**	<b>YES*/**</b>

\*Clause 48 standards that cannot be used to refuse development consent for residential care facilities if compliance is achieved.

\*\* Clause 50 standards that cannot be used to refuse development consent for self-contained dwellings if compliance is achieved.

### 11.3 WLEP 1995

Site Area (12,030 m <sup>2</sup> )	Existing	Proposed	Control	Complies
Building Heights max (m)	Approx. 10.9	18.4	9.5	<b>NO</b>

### 11.4 WRDCP 2003

Site Area (12,030 m <sup>2</sup> )	Existing	Proposed	Control	Complies
Number of Storeys	1-3	1-7 levels (1-5 above-ground)	2	<b>NO</b>
Excavation Piling & Subsurface Wall Setback	N/A	<1.5	1.5m	<b>NO</b>
Building Boundary Setbacks: (Basement Level) (m)				
S.E Frontage (Old South Head Rd)	N/A	4-13	7.5-8	<b>NO (PARTIAL)</b>
S.W Frontage (Laguna St)	N/A	3-25	1-11	<b>YES</b>
N.E Side	N/A	39.5-40	2.5	<b>YES</b>
N.W Rear	N/A	3.3-30.4	15.5	<b>NO (PARTIAL)</b>
Building Boundary Setbacks: (Lower Ground floor level) (m)				
S.E Frontage (Old South Head Rd)	N/A	3.5-15	7.5-8	<b>NO (PARTIAL)</b>
S.W Frontage (Laguna St)	N/A	3-14	1-11	<b>YES</b>
N.E Side	N/A	6-10	2.5	<b>YES</b>
N.W Rear	N/A	3.3-27	15.5	<b>NO (PARTIAL)</b>
Building Boundary Setbacks: (Ground floor level) (m)				
S.E Frontage (Old South Head Rd)	2.8-24.8	0.5-14.5	7.5-8	<b>NO (PARTIAL)</b>
S.W Frontage (Laguna St)	5.2-45	2-15.4	1-11	<b>YES</b>
N.E Side	6-12	5.6-9.6	2.5	<b>YES</b>
N.W Rear	1.8-36.8	3.4-27.2	15.5	<b>NO (PARTIAL)</b>

Site Area (12,030 m <sup>2</sup> )	Existing	Proposed	Control	Complies
Building Boundary Setbacks: (Level 1) (m) S.E Frontage (Old South Head Rd) S.W Frontage (Laguna St) N.E Side N.W Rear	2.8-24.8 5.2-45 6-12 1.8-36.8	0-14.5 1.6-15.4 5.6-8.2 6-26.6	7.5-8 1-11 2.5 15.5	<b>NO (PARTIAL)</b> <b>YES</b> <b>YES</b> <b>NO (PARTIAL)</b>
Building Boundary Setbacks: (Level 2) (m) S.E Frontage (Old South Head Rd) S.W Frontage (Laguna St) N.E Side N.W Rear	2.8-24.8 5.2-45 6-12 1.8-36.8	2.4-14.5 1.6-15.4 5.6-8.2 6-26.6	7.5-8 1-11 2.5 15.5	<b>NO (PARTIAL)</b> <b>YES</b> <b>YES</b> <b>NO (PARTIAL)</b>
Building Boundary Setbacks: (Level 3) (m) S.E Frontage (Old South Head Rd) S.W Frontage (Laguna St) N.E Side N.W Rear	N/A N/A N/A N/A	2.4-14.5 1.6-75 5.6-8.2 18-26.6	7.5-8 1-11 2.5-4 15.5	<b>NO (PARTIAL)</b> <b>YES</b> <b>YES</b> <b>YES</b>
Building Boundary Setbacks: (Level 4) (m) S.E Frontage (Old South Head Rd) S.W Frontage (Laguna St) N.E Side N.W Rear	N/A N/A N/A N/A	3-13.6 67-75 5.6-9.6 18-26.6	7.5-8 1-11 3.25-6.25 15.5	<b>NO (PARTIAL)</b> <b>YES</b> <b>YES</b> <b>YES</b>
Solar Access to Ground Level Open Space of Adjacent Properties	> 35m <sup>2</sup> Dimension – 2.5m	> 35m <sup>2</sup> Dimension – 2.5m	> 35 m <sup>2</sup> Dimension – 2.5m	<b>YES</b>
Solar Access to North-Facing Living Areas of Adjacent Properties	> 3 hours	> 3 hours	3 Hours in Mid-winter	<b>YES</b>
Setback of Bedroom Windows from Streets, Driveways and Parking Areas	>3m	>3m	3m	<b>YES</b>
Front Fence Height (m)	Unknown	1.2 solid	1.2	<b>YES</b>
Car Parking Excavation	N/A	Beyond Building Footprint	Within Building Footprint	<b>NO</b>
Setback from significant trees (m)	>3	>3	3	<b>YES</b>
Access Driveway Width (m)	11	6-13	6-9	<b>NO</b>

## 12. SEPP 65-Design Quality of Residential Flat Development

This SEPP applies to buildings which comprise 3 or more storeys and 4 or more self-contained dwellings. The proposed development includes Building 2 which contains 3-4 storeys and 14 self-contained dwellings. The provisions of this instrument therefore apply to the Building 2 component of the subject application.

**Clause 6** states that where this Policy is inconsistent with any other environmental planning instrument, this Policy prevails ‘to the extent of the inconsistency’.

## **Clause 30 Determination of development applications**

- (1) After receipt of a development application for consent to carry out residential flat development (other than State significant development) and before it determines the application, the consent authority is to obtain the advice of the relevant design review panel (if any) concerning the design quality of the residential flat development.*
- (2) In determining a development application for consent to carry out residential flat development, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):*
  - (a) the advice (if any) obtained in accordance with subclause (1), and*
  - (b) the design quality of the residential flat development when evaluated in accordance with the design quality principles, and*
  - (c) the publication Residential Flat Design Code (a publication of the Department of Planning, September 2002).*
- (3) However, if the relevant design review panel fails to inform the consent authority of its advice concerning the design quality of the residential flat development within 31 days after the request for its advice is made by the consent authority, the consent authority may determine the development application without considering any such advice and a development consent so granted is not voidable on that ground.*
- (4) The 31-day period referred to in subclause (3) does not increase or otherwise affect the period within which a development application is required to be determined by a consent authority.*

A Design Review Panel has not been established for the Woollahra area. However, a design verification statement prepared by a suitably qualified architect has been submitted with the application and is attached as **Annexure 11**. Further, Council's Urban Design Planner has provided the following assessment of the proposal against the 10 design quality principles contained in Clause 9-18 and against the considerations contained in the publication *Residential Flat Design Code*.

### **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.*

### **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.*

Council's Urban Design Planner has provided the following comments with regard to the above-mentioned principles:

## **Context**

*Building 2 is on the western side of the proposal. It is a four level building with residential over retail/service uses on the ground level. This component of the proposal reads as a traditional mixed use building. The building provides the framed entry onto the central courtyard spaces. This location is undergoing transformation to a medium density area. The proposed building does reflect the future character objectives for the Vaucluse East Precinct in the Woollahra Residential DCP. The objective to maintain the evolution of low rise residential building styles through the introduction of good contemporary buildings is reflected in the dramatic horizontal design response which appropriately reflects the size of the site and the relationship to the cemetery to the east.*

## **Scale**

*The site is surrounded by land which is zoned 2(b) and is adjacent to the Vaucluse neighbourhood centre which is characterised by two and three storey buildings. The proposal within highly visible gardens and responding to the curvilinear street pattern is a strong response to the location. The scale of the proposed building is an appropriate response given the size of the site and the dramatic scale and topography of the context.*

The local context is a residential neighbourhood characterised by a diversity of development types ranging from single storey detached houses to 3 storey residential flat buildings of varying age and architectural styles. Whilst the predominant architectural style is face brick and tiled roofs, there are numerous modern rendered masonry developments with flat roof forms indicative of a precinct undergoing transition from old to modern architecture. Accordingly, regard should be given to Council's desired future character provisions for the precinct. Woollahra RDCP 2003 contains desired future character objectives and controls for the Vaucluse East Precinct in which the subject site is located.

The desired future character objectives are as follows:

- O 4.14.1 To retain the scenic qualities provided by the dramatic topography, natural vegetation and low scale built elements of the precinct.*
- O 4.14.2 To reinforce the precinct's landscape setting by minimising alterations to the landform and preserving the existing tree canopy.*
- O 4.14.3 To maintain mature street trees, grassed verges and garden plantings.*
- O 4.14.4 To protect important views from the public spaces of the precinct to the harbour, the city skyline and to the surrounding districts.*
- O 4.14.5 To maintain the evolution of low rise residential building styles through the introduction of good contemporary buildings.*

Building 2 complies with the applicable desired future character performance criteria with the exception of the proposed 3-4 storeys exceeding the maximum of 2 storeys prescribed under C4.14.7.3.

Notwithstanding the non-compliance with the maximum number of storeys control, Building 2 is considered to be satisfactory with regard to the above-mentioned objectives for the following reasons.

- The visual impact of the south-western (Laguna St) front elevation of Building 2 as presented to adjoining properties and the Laguna St streetscape is considered to be adequately mitigated by:
  - a significant setback of 4.3 m from the Laguna St frontage;
  - the minimum 16.5 m gap between Building 2 and Building 1 with splayed/stepped alignments increasing the gap to a maximum of approximately 26 m thereby providing adequate separation;
  - a 1 m recessed Lower Ground Floor level alignment;
  - 3-4 m recessed balconies;
  - an 8-14 m (to the door) recessed carpark entrance;
  - the differentiation in glazing appearance with neutral glazing at Lower Ground Floor level and blue/green glazing to the 3 levels above; and
  - the site is considered to have an independent context due to its large size and corner location.
- The visual impact of the north-western (rear) elevation of Building 2 as presented to adjoining properties is considered to be adequately mitigated by:
  - a significant rear setback of 6 m;
  - a variety of high quality external finishes including blue/green glazing, dark finished masonry panels and aluminium louvre screens;
  - screening provided by the proposed substantial landscaping adjacent to the rear boundary including approximately 10 x 6-15 m high at maturity specimens;
  - screening provided by the existing garage structures to the rear of the majority of the adjoining properties (105-109 New South Head Rd);
  - screening provided by existing substantial landscaping at the rear of 111 New South Head Rd;
  - the orientation of the majority of the adjoining properties to the north-west toward the primary harbour views and winter solar access; and
  - the use of substantial sections at the rear of the majority of the adjoining properties for car parking purposes.
- It retains the significant Norfolk Island Pine tree adjacent to the central section of the Laguna St frontage.
- Landscaping works are proposed to the section of Council's footpath adjacent to the Laguna St frontage involving new paving and new/upgraded landscaped verges and provides appropriate additional street trees subject to the substitution of the proposed 5 Tuckeroos with 5 Water Gums (see **Condition C.14**) which will improve upon the existing landscaping adjacent to the street frontage.
- It will not obstruct important views from public spaces within the precinct of the harbour, the city skyline and surrounding districts.
- The proposed external materials consist predominantly of blue/green and clear glazing, dark finished masonry panels and aluminium louvre screens are considered to be consistent with the style of modern development in the locality.

- It is considered that the proposal will result in a substantial improvement in the visual amenity of the locality relative to the existing unsightly school development due to the high quality architectural design, external finishes and landscaping.

Due to the above, Building 2 is considered to be satisfactory in terms of compatibility with the context of the surrounding built and natural environment. Whilst it is acknowledged that Building 2 will appear large relative to surrounding development, the demand for seniors housing in an area with an ageing population is considered to be of such public interest as to justify the support of the proposal which exceeds the typical height and density controls which apply to residential flat buildings and dwelling-houses in the locality.

### **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.*

Council's Urban Design Planner has provided the following comments in this regard:

*The proposed building addresses and adds to the local centre. The built form on site is carefully positioned to form meaningful outdoor space. The building is large, but moulded by the site parameters and constraint. Given the building's function this building is considered appropriate.*

*This proposal connects with the Vacluse Shopping Village. The built form on site creates and encloses significant outdoor space. The proposal makes a strong visual statement which is considered appropriate to the scale of the topography and adjacent land use. This proposal is supported. The building's design is clearly conceived and serves the purpose to which it is intended with grace and strength.*

The built form of the proposal is considered to be satisfactory for the above-mentioned reasons and for the reasons advanced above under the section **Principle 1: Context & Principle 2: Scale**. Further, it will provide high quality internal amenity for future occupants in terms of:

- A series of communal open space areas with varying characteristics including a playground, courtyards and a vegetable garden with a northerly aspect.
- Adequately proportioned private open space areas (balconies and terraces).
- Internal living spaces with adequate natural direct and/or indirect light, ventilation and good quality uncluttered outlooks toward landscaping and communal landscaped areas.

### **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.*

Council's Urban Design Planner has provided the following comments in this regard:

*The local infrastructure can readily support the proposed additional population. This building is an appropriate density for the location which is well served by transport links and by local shops.*

Notwithstanding the high floor space ratio of approximately 1.81:1 for the entire development, the density of the proposal is considered to be satisfactory for the following reasons:

- The site has excellent access to public transport, shops and services and will provide a wide range of communal facilities within the development.
- The development will assist in meeting the increasing demand for serviced housing for our ageing population and enable people to remain within the local area.
- The proposal will improve the visual amenity of the surrounding public domain whilst adequately maintaining the amenity of surrounding residential properties in terms of views, solar access, privacy and visual amenity.
- With regard to midwinter overshadowing to adjoining properties, the shadow diagrams submitted with the application indicate that whilst the proposal will cast shadow upon the adjoining properties on the opposite side of Laguna St (108 Old South Head Rd & 3-9 Laguna St) during winter morning periods and 757-759 Old South Head Rd & 2A Burge St during winter afternoon periods, solar access will be maintained to these properties in accordance with Council's requirements (a minimum of two hours to substantial portions of main ground level private open space areas). Accordingly, the overshadowing to adjoining properties is not considered to be significant.
- The development is sufficiently compatible with the height and scale of surrounding development. In this regard, the site is considered to have its own context due to its large size and corner location.
- It will provide high quality internal amenity for future occupants in terms of adequately proportioned private and communal open spaces, generous internal living spaces, natural direct and/or indirect light, ventilation and good quality uncluttered outlooks toward landscaping and communal landscaped areas.

### **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.*

Council's Urban Design Planner has provided the following comments in this regard:

*Vaocluse has a high proportion of older residents and is short of aged housing. Aging in your local community, means less travelling for visitors, so saving on energy resources. The scheme also incorporates a rainwater harvesting system.*

Council's Team Leader-Environment and Sustainability has provided the following comments with regard to the ESD performance of the proposal:

*Section 1.2 of the Cundall ESD report lists the general principles that are to be followed to exceed the minimum requirements. Section 2 of the Cundall ESD report provides more details on the initiatives that will be incorporated into the design to achieve a good ESD outcome. These include:*

- *Insulation of walls, floors and ceilings*
- *Low-e glazing on windows*
- *Skylights to provide daylight*
- *Overhangs and external shading devices*
- *Natural ventilation*
- *CO monitoring in Carparks*
- *Variable Speed Drives to reduce energy use for fans*
- *Building Management System (BMS) energy efficiency controls*
- *Centralised VRV system for heating and cooling*
- *Centralised gas hot water system*
- *Efficient light fittings including LEDs and fluorescent*
- *Day light dimmer timers and motion sensors in car parks, common areas, and plant rooms*
- *High energy efficiency appliances*
- *High water efficient appliances*
- *The use of native drought resistant plants to reduce water use*
- *Water Sensitive Urban Design Measures*
- *Greywater recycling in Laundries*
- *150,000 litre rainwater tank*

*If these initiatives are incorporated at the detailed design stage, a good ESD outcome will be achieved.*

**Condition C.2** requires the implementation of the above-mentioned ESD measures.

Further, Building 2 is considered to be satisfactory with regard to resource, energy and water efficiency for the following reasons:

- The site has excellent communal facilities on-site, access to public transport and will be within walking and wheelchair accessible distance to local shops and services, thereby reducing the demand for private vehicle trips.
- The proposal satisfies BASIX requirements.
- Direct winter solar access for 3 hours will be provided to 11 of the 14 (78%) of the self-contained dwellings in compliance with the 70% de facto requirement stipulated under Clause

50 (e) of SEPP (Housing for Seniors or People with a Disability) 2004 minimising the need for heating.

- Adequate natural ventilation will be provided to all of the self-contained dwellings minimising the need for air conditioning.
- The large, communal landscaped open space areas proposed to the northern section of the site will provide sunny (winter) outdoor areas with high amenity for residents.

## **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.*

Council's Urban Design Planner has provided the following comments in this regard:

*The amended proposal's principal open space to the west of the main building is a strong design statement. This space is now separated into clearly defined parts. Additional seating to the top of the stairs at the edge of the raised garden beds defines the upper space as clearly being of a different nature to the more public space adjacent to Laguna Street.*

*Additional gating in the amended scheme clearly delineates where the semi-public space ends and private space begins. This provides clarity as to where is public where is semi-public and where is private. With these delineations the scheme is easier for the visitors and residents to understand.*

*The visual connection between the Vacluse village centre and the proposal has been improved, with pedestrian movement flowing into the scheme.*

*The entry to the car park has been realigned and the cross-over width reduced.*

*The activity based approach to the northern part of the open space is appropriate to the use. The landscape design divides the external space into three parts. The first is the forecourt which is an extension of the public domain and forms a welcoming entry to the site. The second part is the elevated courtyard space outside the dining room which has an amount of seating and is a place to pause and chat. The third section is the visiting children's play space, the contained contemplation gardens and the vegetable garden.*

Council's Tree and Landscape Officer has provided the following comments:

*Previous DA 813/2007/1 Tree and Landscape referral comments dated 25 June 2008 acknowledged the overall arboricultural quality of the tree population on the subject site was poor and that the site had significant potential for enhancement as part of the proposed site landscaping. Accordingly removal of the majority of existing trees on site was recommended and retention of a Norfolk Island Pine located along the Laguna Street frontage and a group of trees located on the side north western boundary.*

*The current development application proposes the same trees for retention. Trees proposed for retention are Tree No. 49 a mature Araucaria heterophylla Norfolk Island Pine located along the Laguna Street frontage. Tree No.s 23 and 24 Swamp Sheoaks and Tree No.s 26 and 28 Southern Mahoganies. The submitted landscape plan proposes adequate replacement tree planting.*

*The submitted landscape plan also proposes street tree planting along the Laguna Street frontage and Old South Head Road frontage of the subject site comprising Tuckeroo tree species. I have consulted with Council's Acting Coordinator Tree Maintenance regarding the proposed species of street tree planting and a change to the proposed species is recommended that will perform better in the proposed locations. Council's Acting Coordinator Tree Maintenance has recommended Tristaniopsis laurina Water gum to be planted along the Laguna Street frontage and Banksia integrifolia Coastal Banksia to be planted along the Old South Head Road frontage.*

*The submitted Hydraulic services plan indicates proposed services to be located in the Tree Protection Zones of trees to be retained. An amended plan should be prepared that locates all hydraulic services outside the Tree Protection Zones of trees to be retained.*

The amended street tree plantings are addressed by **Condition C.14**.

The relocation of the hydraulic services outside the tree protection zones is addressed by **Condition C.15**.

The proposal, as conditioned, is considered to be satisfactory with regard to landscaping for the following reasons:

- Including the 2204 m<sup>2</sup> of landscaped areas above the underground levels (including the plazas and playground) and the 1277 m<sup>2</sup> of communal landscaped area on top of the roof of Building 1 (including extensive garden planters with pathways and deck, a mini-golf course and a bowling/croquet green), a total of approximately 7104 m<sup>2</sup> of communal landscaped area is provided. Future occupants of Building 2 will have unrestricted access to all communal landscaped areas.
- The landscape plans submitted with the development application state that approximately 18% of the site area will constitute a deep soil zone which is in excess of the 15% deemed to satisfy requirement. A total of approximately 2530 m<sup>2</sup> of deep soil landscaped area will be provided.
- The landscaped area provision and species selection are considered to be satisfactory in terms of providing sufficient vegetated areas that will provide an attractive external environment, adequate screening, gardening opportunities and sufficient open-air recreation facilities with a northerly aspect to meet the passive recreational needs of occupants.

- Significant trees on-site identified by Council's Tree Officer will be retained, including a Norfolk Island Pine adjacent to the central section of the Laguna St frontage; and a group of 4 significant trees adjacent to the section of the north-western boundary adjacent to the rear boundaries of 121 and 123 New South Head Road.
- Landscaping works are proposed to the section of Council's footpath adjacent to the Laguna St frontage involving new paving, new/upgraded landscaped verges, and the provision of appropriate additional street trees subject to the substitution of the proposed 5 Tuckeroos with 5 Water Gums (see **Condition C.14**). This will improve upon the existing landscaping adjacent to the street frontage.
- The extensive use of native plant species will improve the biodiversity of the local ecosystem.

### **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.*

Council's Urban Design Planner has provided the following comments in this regard:

*The amenity of the apartments meets the expectations of SEPP 65.*

Building 2 is considered to be satisfactory with regard to internal amenity for the following reasons:

- Direct winter solar access for at least 3 hours will be provided to 11 of the 14 (78%) of the self-contained dwellings, including private open space areas, in compliance with the 70% deemed to satisfy requirement stipulated under Clause 50 (e) of SEPP (Housing for Seniors or People with a Disability);
- Good natural ventilation will be provided to all of the self-contained dwellings;
- The substantial, wheelchair accessible, communal landscaped open space areas proposed to the northern section of the site will receive abundant winter solar access and provide opportunities for social interaction via the playground, courtyards and produce garden;
- Ready access (including wheelchair) to a wide range of shops and services on-site and externally;
- Good quality uncluttered outlook towards landscaping and communal landscaped areas;
- The proposal provides 2.7 m ceiling heights throughout the building complying with the 2.4 m ceiling height requirement for non-habitable rooms and 2.7 m ceiling height requirement for habitable rooms set out in Part 3 of the Residential Flat Design Code;
- The proposed 78 m<sup>2</sup> internal areas are in excess of the 63.4 m<sup>2</sup> internal areas stipulated for one bedroom single aspect units and the proposed 110-124 m<sup>2</sup> internal areas are in excess of the 89-121 m<sup>2</sup> internal areas stipulated for the various two bedroom unit types set out in Part 3 of the

Residential Flat Design Code are efficiently designed and provide sufficient internal, built-in storage areas;

- Whilst the proposed 7 m<sup>2</sup> external areas for the three proposed one bedroom units are less than the 10 m<sup>2</sup> stipulated for one bedroom single aspect units and the 11-37 m<sup>2</sup> external areas for the eleven proposed two bedroom units are predominantly less (9 of the 11) than the 11-33 m<sup>2</sup> for the various two bedroom unit types set out in Part 3 of the Residential Flat Design Code, occupants of Building 2 will have access to the generous (7104 m<sup>2</sup>) communal ground level and Building 1 roof top landscaped areas; and
- Each of the units will have satisfactory visual and acoustic privacy.

In terms of external amenity impacts associated with Building 2, it is considered that the amenity of adjoining properties will be adequately maintained in terms of visual impact (refer to the section **Principle 1: Context**), privacy subject to the **Condition C.1a** (refer to the section **13 SEPP (Housing for Seniors or People with a Disability) 2004-Clause 34 Visual and acoustic privacy**), solar access (refer to the section **Principle 4: Density**) and views (refer to the section **18.3 Views Performance Criteria**).

### **Principle 8: Safety and security**

*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 the 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.*

Council's Urban Design Planner has provided the following comments in this regard:

*The external spaces are appropriately defined, enabling residents to “own” the place. The independent living apartments don’t have private outdoor space other than balconies.*

Residents of adjoining New South Head Road properties to the north-west are concerned that general public accessibility to the site will compromise their security. The amended landscape plan submitted to Council on 30 January 2013 to address concerns raised by Council’s Urban Design Planner included the provision of gates limiting the public access to the site to the lower and upper plazas off Laguna Street. This will prevent access to the communal open space areas further to the north-east that will be accessible only to occupants of the development, their visitors and staff.

It is considered that these amendments will act as an adequate barrier to the general public accessing the north-western boundary of the site and the adjoining properties.

The proposal provides multiple windows and balconies on all elevations which will facilitate casual surveillance by residents of the publicly accessible plaza areas, the communal open space areas and the building entries. However, it is recommended that this casual surveillance be reinforced with the following measures:

- Lighting along the pathways through the communal open space areas and to the building entries.
- Intercom systems and security doors provided to the building and carpark entries.
- A peep hole is to be provided to the front door to each of the self-contained dwellings.

The above recommendations are addressed by **Condition C.4**).

### **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 the 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.*

Council's Urban Design Planner has provided the following comments in this regard:

*It is unlikely that accommodation in this facility will be “affordable”. But, by providing dignified attractive facilities in an appropriate location for aging residents, it will free up housing for other sectors of the population. This will help housing supply. The function adds to the range of housing available in the location.*

Council's Director-Community Services has advised that:

*As reflected in the Woollahra Social & Cultural Plan, it is important to residents of Woollahra that they are able to remain living independently in their community as they age. This is especially relevant to Woollahra as it is an area with an increasing number of older persons.*

*The establishment of housing designed specifically to meet the needs of older persons is one way of addressing this challenge. Without this type of housing many Woollahra residents could be forced to move away from their community as they age.*

Woollahra Council does not have an affordable housing policy. The building does provide a suitable mix of dwelling sizes with 3 more affordable, smaller, 1 bedroom dwellings and 11 larger 2 bedroom dwellings with varying levels of internal and external amenity in terms of size, views/outlook and solar access which will be reflected in a range of market values which is considered to satisfy the provisions of this clause.

### **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 has provided the following comments in this regard:

*The strong aesthetics of this proposal are likely to divide opinion. The designer has considered that, in this context, it is possible to express the functional requirements of a large serviced age care facility without compromising the amenity of the location. The scale of the landscape in this location is dramatic and this building responds to that setting. I consider the approach to the aesthetics of the building appropriate.*

The proposal is considered to be satisfactory in terms of aesthetics for the above-mentioned reasons and for those advanced above under the section ***Principle 1: Context & Principle 2: Scale***.

**Clause 30A Standards that cannot be used as grounds to refuse development consent for residential flat buildings**

- (1) A consent authority must not refuse consent to a development application for the carrying out of residential flat development on any of the following grounds:
  - (a) Ceiling height: if the proposed ceiling heights for the building are equal to, or greater than, the recommended ceiling heights set out in Part 3 of the Residential Flat Design Code.

The proposal provides 2.7 m ceiling heights throughout the building complying with the 2.4 m ceiling height requirement for non-habitable rooms and 2.7 m ceiling height requirement for habitable rooms.

- (b) Apartment area: if the proposed area for each apartment is equal to, or greater than, the recommended internal area and external area for the relevant apartment type set out in Part 3 of the Residential Flat Design Code.

The proposed 78 m<sup>2</sup> internal areas are in excess of the 63.4 m<sup>2</sup> internal areas stipulated for one bedroom single aspect units and the proposed 110-124 m<sup>2</sup> internal areas are in excess of the 89-121 m<sup>2</sup> internal areas stipulated for the various two bedroom unit types set out in Part 3 of the Residential Flat Design Code are efficiently designed and provide sufficient internal, built-in storage areas;

Whilst the proposed 7 m<sup>2</sup> external areas for the three proposed one bedroom units are less than the 10 m<sup>2</sup> stipulated for one bedroom single aspect units and the 11-37 m<sup>2</sup> external areas for the eleven proposed two bedroom units are predominantly less (9 of the 11) than the 11-33 m<sup>2</sup> for the various two bedroom unit types set out in Part 3 of the Residential Flat Design Code, occupants of Building 2 will have access to the generous (7104 m<sup>2</sup>) communal ground level and Building 1 roof top landscaped areas.

Building 2 is considered to be satisfactory with regard to all relevant considerations contained in the ***Residential Flat Design Code*** for reasons advanced above under the 10 design quality principles.

**13. SEPP (Housing for Seniors or People with a Disability) 2004**

**Clause 4** stipulates the types of land on which housing developments for seniors or people with a disability may be erected and states:



*This Policy applies to land within New South Wales that is land zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes, but only if:*

- (a) development for the purpose of any of the following is permitted on the land:*
  - (i) dwelling-houses,*
  - (ii) residential flat buildings,*
  - (iii) hospitals,*
  - (iv) development of a kind identified in respect of land zoned as special uses, including (but not limited to) churches, convents, educational establishments, schools and seminaries, or*
- (b) the land is being used for the purposes of an existing registered club.*

The SEPP is applicable to the subject site as the land is zoned 5 Special Uses (School) which permits educational establishments.

**Clause 5** states that where this Policy is inconsistent with any other environmental planning instrument, this Policy prevails ‘*to the extent of the inconsistency*’.

**Clause 10** identifies the proposed development as a residential care facility and self-contained dwellings, which are forms of *seniors housing* to which the SEPP applies.

**Clause 11** defines a *residential care facility* as:

*Residential accommodation for seniors or people with a disability that includes:*

- (a) meals and cleaning services, and*
- (b) personal care or nursing care, or both, and*
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,*  
*not being a dwelling, hostel, hospital or psychiatric facility.*

The proposed 227 bed residential care facility housed within Building 1, the proposed beauty salon and medical consulting room housed within Building 2 and the proposed communal dining facility housed within Building 3 are considered to be consistent with this definition.

**Clause 13** defines *self-contained dwellings* as:

*(1) General term: “self-contained dwelling”*

*In this Policy, a self-contained dwelling is a dwelling or part of a building (other than a hostel), whether attached to another dwelling or not, housing seniors or people with a disability, where private facilities for significant cooking, sleeping and washing are included in the dwelling or part of the building, but where clothes washing facilities or other facilities for use in connection with the dwelling or part of the building may be provided on a shared basis.*

*(2) Example: “in-fill self-care housing”*

*In this Policy, in-fill self-care housing is seniors housing on land zoned primarily for urban purposes that consists of 2 or more self-contained dwellings where none of the following services are provided on site as part of the development: meals, cleaning services, personal care, nursing care.*

(3) *Example: “serviced self-care housing”*

*In this Policy, serviced self-care housing is seniors housing that consists of self-contained dwellings where the following services are available on the site: meals, cleaning services, personal care, nursing care.*

The proposed 14 serviced self-contained dwellings housed within Building 2 are considered to be consistent with this definition. The proposed communal dining facility housed within Building 3 is also considered to be consistent with this definition.

The proposed publicly accessible commercial uses including the beauty salon and medical consulting room adjacent to the Laguna Street frontage are considered to be ancillary to the seniors living development and therefore do not represent a prohibited use within the Special Uses zoning.

### **Clause 18 Restrictions on occupation**

This clause restricts the occupation of the development to the following;

- (a) seniors or people who have a disability,*
- (b) people who live within the same household with seniors or people who have a disability,*
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.*

Council is required to impose a condition of consent limiting the kinds of people who may occupy the development to the above. **Condition A.6** addresses this issue.

### **Clause 24 Site compatibility certificates required for certain development applications**

A site compatibility certificate is required for the subject development as the subject site is zoned 5 Special Uses and adjoins land zoned primarily for urban purposes. The Department of Planning and Infrastructure issued a site compatibility certificate for the proposed development on 9 September 2012 subject to:

- the final number of beds and dwelling units being subject to the consent authority being satisfied with the form, height, bulk and scale, setbacks and landscape elements of the proposal; and
- the upgrade of the footpath and kerb ramp at the corner of New South Head Rd and Laguna St to comply with AS1428 Design for Access and Mobility, Part 1, Version 2009.

As discussed under relevant headings of consideration, the form, height, bulk and scale, setbacks and landscape elements of the proposal are considered to be satisfactory in terms of accommodating the proposed 227 residential care beds and 14 serviced self-care dwellings.

**Condition C.6** requires the upgrade of the non-compliant section of the footpath and kerb ramp at the corner of New South Head Rd and Laguna St to comply with AS1428 Design for Access and Mobility, Part 1, Version 2009.

### **Clause 26 Location and access to facilities**

This clause requires written evidence that the development will provide residents with adequate wheelchair access or adequate public transport access to a range of shops, services and facilities within the local area. Specifically, the development must have access to:

- (a) *Shops, bank service providers and other retail and commercial services that residents may reasonably require, and*
- (b) *Community services and recreation facilities, and*
- (c) *The practice of a general medical practitioner.*

Access complies with this clause if:

- (a) *The facilities and services are located not more than 400 m from the site accessible by means of a suitable access pathway and the overall average gradient for the pathway is no more than 1:14, although the following gradients along the pathway are also acceptable:*
  - (i) *A gradient of no more than 1:12 for slopes for a maximum of 15 m at a time,*
  - (ii) *A gradient of no more than 1:10 for a maximum length of 5 m at a time,*
  - (iii) *A gradient of no more than 1:8 for distances of no more than 1.5 m at a time, or*
- (b) *There is a public transport service available to the residents who will occupy the proposed development:*
  - (i) *That is located at a distance of not more than 400 m from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and*
  - (ii) *That will take those residents to a place that is located at a distance of not more than 400 m from the required facilities and services, and*
  - (iii) *That is available both to and from the proposed development at least once between 8am and 12pm per day and at least once between 12pm and 6pm Monday to Friday.*

The gradient along the pathway from the site to the public transport services and from the public transport services to the facilities and services must comply with the same gradients referred to above. The access pathway is suitable if it is a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like.

An Access Report has been submitted with the DA which confirms compliance with the above requirements. The subject site is within 400 m, with accessible gradients, to the Vaucluse shops on New South Head Rd and 3 bus stops which provide public transport to Bondi Junction, Dover Heights and Rose Bay shopping centres. However, the report states that the footpath at the corner of New South Head Rd and Laguna St does not comply with AS1428 with regard to wheelchair access.

As discussed previously under **Clause 24 Site compatibility certificates required for certain development applications**, **Condition C.6** requires the upgrade of the non-compliant section of the footpath and kerb ramp at the corner of New South Head Rd and Laguna St to comply with AS1428 Design for Access and Mobility, Part 1, Version 2009.

## **Clause 28 Water and Sewer**

This clause requires Council to be satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.

A feasibility letter from Sydney Water has been submitted with the application stating that there is satisfactory connection to a reticulated water system and there are adequate facilities for the removal and disposal of sewerage (refer to **Annexure 12**). **Conditions C.20 & F.3** require a

Section 73 Certificate to be obtained from Sydney Water and compliance achieved with the terms of the certificate.

### **Clause 30 Site Analysis**

It is considered that the proposal provides an adequate site analysis.

### **Clause 32 Design of residential development**

Consent must not be granted to the subject application unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out under Clauses 33-39 of the SEPP. The assessment of the proposal against the provisions of these clauses is set out below.

### **Clause 33 Neighbourhood amenity and streetscape**

This clause states that the proposed development should:

- (a) *Recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area.*
- (c) *Maintain reasonable neighbourhood amenity and appropriate residential character by:*
  - (i) *Providing building setbacks to reduce bulk and overshadowing.*
  - (ii) *Using building form and siting that relates to the site's land form.*
  - (iii) *Adopting building heights at the street frontage that are compatible in scale with adjacent development.*
  - (iv) *Considering, where buildings are located on the boundary, the impact of the boundary*
  - (v) *walls on neighbours.*
- (d) *Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line.*

Council's Urban Design Planner has provided the following comments in this regard:

*The proposal meets the expectations of the precinct's desired future character. The building is sited so as to not impact on adjacent development and the building's height, although higher than the surrounding development, is appropriate to a building of this size.*

*The proposal potentially means more customers for Vacluse Shopping Village, as well as adding retail services. The physical connection between the proposal and the shopping village, is an important component of the design approach.*

### **South-eastern (Old South Head Rd) front elevation**

The predominant setback of the above ground portion of the proposed development from the south-eastern (Old South Head Rd) frontage (Building 1) is 2.4-14.5 m which is partially less than the 7.5-8 m front setback of the adjoining development at 108 & 110-112 Old South Head Rd.

The external wall height of the elevation above ground level at the front boundary is approximately 17-19 m (predominantly 3-5 storeys) which is considerably greater than the 1-2 storeys of adjoining development.

Notwithstanding these inconsistencies with the front alignment and height of adjoining development, the visual impact of the south-eastern (Old South Head Rd) front elevation as presented to adjoining properties and the Old South Head Rd streetscape is considered to be adequately mitigated by:

- the breaking up of the elevation via a 1-2 storey central step-down in response to the fall in the land;
- a wave-shaped alignment;
- a 1 m recessed Lower Ground Floor level alignment;
- an open sided roof top loggia to the south-western module;
- a variety of external finishes including blue/green glazing, neutral glazing, charcoal coloured metal screens and timber-like window shadow boxes; and
- the site is considered to have an independent context due to its large size and corner location.

It is considered that the proposal will result in a substantial improvement in the visual amenity of the locality relative to the existing unsightly school development due to the high quality architectural design, external finishes and landscaping.

Whilst the south-eastern elevation of the proposal will cast shadow upon the adjoining properties 757-759 Old South Head Rd & 2A Burge St during winter afternoon periods, solar access will be maintained to these properties in accordance with Council's requirements (a minimum of two hours). Accordingly, the overshadowing to adjoining properties is not considered to be significant.

### **South-western (Laguna St) front elevation**

The predominant setback of the above ground portion of the proposed development from the south-western (Laguna St) frontage is 1.6-15.4 m (Building 1) and 4.3 m (Building 2) which is considered to be compliant with the 1-11 m front setback of the adjoining development at 105 New South Head Rd.

The external wall heights of the elevations above ground level at the front boundary are approximately 13-16 m (predominantly 4 storeys) which is considerably greater than the 2 storeys of adjoining development.

Notwithstanding the inconsistency with the height of adjoining development, the visual impact of the south-western (Laguna St) front elevations as presented to adjoining properties and the Laguna St streetscape is considered to be adequately mitigated by:

- the minimum 16.5 m gap between the buildings with splayed/stepped alignments increasing the gap to a maximum of approximately 26 m breaking up the elevation into two distinct modules;
- a 1 m recessed Lower Ground Floor level alignment;
- an open sided roof top loggia to the south-eastern module (Building 1);
- 3-4 m recessed balconies;
- an 8-14 m (to the door) recessed carpark entrance to Building 2;
- the differentiation in glazing appearance with neutral glazing at Lower Ground Floor level and blue/green glazing to the 3 levels above;

- a 2.5 m central wall offset to the south-eastern module (Building 1); and
- an angled alignment and relatively uniform glazed vertical plane to the front section of the south-eastern module (Building 1) contrasting with 800 mm recessed glazing/balustrading from the outer horizontal masonry ledges/overhangs at each level to the rear section; and
- the site is considered to have an independent context due to its large size and corner location.

It is considered that the proposal will result in a substantial improvement in the visual amenity of the locality relative to the existing unsightly school development due to the high quality architectural design, external finishes and landscaping.

Whilst the south-western elevations of the proposal will cast shadow upon the adjoining properties on the opposite side of Laguna St (108 Old South Head Rd & 3-9 Laguna St) during winter morning periods, solar access will be maintained to these properties in accordance with Council's requirements (a minimum of two hours). Accordingly, the overshadowing to adjoining properties is not considered to be significant.

### **North-eastern side elevation**

The predominant setback of the above ground portion of the proposed development from the north-eastern side boundary (Building 1) is 5.6-8.2 m which is fully compliant with Council's minimum side boundary setback requirement of 2.5-6.25 m specified under Woollahra RDCP 2003.

The external wall height of the elevation above ground level at the side boundary is approximately 10.8-12 m (predominantly 3 storeys) which is considerably greater than the 1-2 storeys of the adjoining development.

Notwithstanding this inconsistency with the height of adjoining development, the visual impact of the north-eastern side elevation as presented to adjoining properties and the Old South Head Rd streetscape is considered to be adequately mitigated via:

- a 2.5 m central wall offset;
- an angled alignment and relatively uniform glazed vertical plane to the front section contrasting with 800 mm recessed glazing from the outer horizontal masonry ledges/overhangs at each level to the rear section; and
- the site is considered to have its own context due to its large size and corner location.

It is considered that the proposal will result in a substantial improvement in the visual amenity of the locality relative to the existing unsightly school development due to the high quality architectural design, external finishes and landscaping.

The north-eastern elevation of the proposal will not cause any significant overshadowing to adjoining properties.

### **North-western (rear) elevation**

The predominant setback of the above ground portion of the proposed development from the north-western rear boundary is 18.6-28 m (Building 1), 6 m (Building 2) and 3.5-7.8 m (Building 3). The rear boundary setbacks in relation to Buildings 2 and 3 are non-compliant with Council's minimum rear boundary setback requirement of approximately 15.5 m (25% of the average site length) specified under Woollahra RDCP 2003.

The external wall heights of the rear elevations to the 3 buildings above ground level at the rear boundary are approximately 10.4-15.2 m/3-4 storeys (Building 1), 9.8-10.6 m/3 storeys (Building 2) & 4.2-6.4 m/1 storey plus clerestory (Building 3). The heights of Buildings 1 & 2 are considerably greater than the 2 storeys of adjoining development.

Notwithstanding the inconsistencies with Council's rear setback requirement (Buildings 2 and 3) and height of adjoining development (Buildings 1 & 2), the visual impact associated with the north-western (rear) elevations as presented to adjoining properties is considered to be adequately mitigated via:

- substantial rear setbacks with regard to Building 1 of 18.6-28 m;
- a significant rear setback of 6 m with regard to Building 2. It could be argued that the north-western elevation to Building 2 constitutes a side elevation as it is perpendicular to the Laguna Street frontage. In this regard, the proposed 6 m setback is fully compliant with the side boundary setback requirement of approximately 4.65-5.05 m;
- a significant rear setback of 7.8 m in relation to the clerestory to Building 3. It could be argued that the north-western elevation to Building 3 constitutes a side elevation as it is perpendicular to the Laguna Street frontage. In this regard, the proposed 7.8 m setback is fully compliant with the side boundary setback requirement of approximately 3 m;
- the lower level of Building 3 (involving a 3.5 m setback) extends only approximately 250-900 mm above the fence height and would fully comply with the side boundary setback requirement of 2.5 m if applied;
- substantial articulation provided by the 800 mm recessed glazing from the outer horizontal masonry ledges/overhangs at each level to Building 1;
- substantial modulation to Building 3 provided by the 4.3 wall off-set to the clerestory from the masonry base;
- a variety of external finishes including blue/green glazing, dark finished masonry panels and aluminium louvre screens to Building 2;
- screening provided by the proposed substantial landscaping adjacent to the rear boundary including 21 x 10-30 m high at maturity specimens;
- screening provided by the existing garage structures to the rear of the majority of the adjoining properties (105-109 & 115-129 New South Head Rd);
- screening provided by existing substantial landscaping at the rear of 111, 115, 121 & 123 New South Head Rd;
- the orientation of the majority of the adjoining properties to the north-west toward the primary harbour views and winter solar access; and
- the use of substantial sections at the rear of the majority of the adjoining properties for car parking and clothes drying purposes.

The north-western elevations of the proposal will not cause any significant overshadowing to adjoining properties.

Subsection (b) of Clause 33 states:

- (b) *Retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan.*

In this regard, Council's Heritage Officer has provided the following heritage related comments:

### ***Heritage framework***

- *The subject buildings are not a heritage item in the LEP and are not listed on the State Heritage Register.*
- *The subject buildings are in the vicinity of a number of heritage items, namely: the bus stop shelter on New South Head Road, opposite Serpentine Parade; the Bi-Centennial Coastal Cliff Walk within Christison Park; Macquarie Lightstation; and (in Waverley Municipality) South Head Cemetery.*
- *The subject buildings are not in a heritage conservation area.*

### ***Significance of heritage items in the vicinity***

*The site of the Bi-Centennial Coastal Cliff Walk has strong historical links to the earliest days of the European Settlement of Australia, and, as such, has high social and historic significance. The building remnants such as the bunkers and gun emplacements have high social and historic significance as part of the defence systems initiated in the late nineteenth century and at the beginning of the Second World War. The natural vegetation and rock formations have high social and historical significance as part of the history of European development of the Colony of New South Wales. The Signal Station and the Macquarie Lighthouse have aesthetic significance as part of the historic development of the area.*

*The bus stop (former tram stop) on New South Head Road, opposite Serpentine Parade has historic and social significance as part of the original tram line from the city to Watson's Bay, and is now used as a bus shelter. The shelter has aesthetic significance as it is constructed in a Federation style using typical timber detailing and materials from that period.*

*The Macquarie Lightstation, built in 1883, is significant as the site of the first lighthouse to be built in Australia and represents the longest continuously operating site of a navigational beacon in Australia. The Lightstation is significant for providing a rare example of the historical association with the colonial Governor Lachlan Macquarie and with colonial Architects Francis Greenway and James Barnet. The Lightstation is significant for its outstanding landscape value, located on a dominant and dramatic portion at the entry to Sydney Harbour. The nineteenth century buildings possess a visual unity in their harmony form, scale, materials and textures. The Lightstation is significant for illustrating the difficulties of construction in the early period of European settlement, including the isolation of the site and of the colony and the necessity to quarry materials on site. The Lightstation is significant for providing material evidence of the changing living and working conditions of the lighthouse keepers and their families, who constitute an early maritime community.*

*South Head Cemetery is the earliest cemetery in the Waverley district. Of special interest for its administration by a private trust from 1845 to 1941, it includes the graves of several prominent citizens. One of the best-maintained and intact old cemeteries in Sydney. Of State significance, it is an excellent reminder of Victorian and Edwardian attitudes to life and death. Especially important for headstones from the period 1900-1950; the headstones are in a fine state of preservation.*

### ***Assessment of heritage impact***

*The proposal is sufficiently distant from the Bi-Centennial Coastal Cliff Walk, the bus stop and the Macquarie Lightstation that it will have no effect on these heritage items.*

*The proposal is separated from South Head Cemetery by Old South Head Road. The south-east streetscape elevation of Building 1 which runs the length of the site is four and five storeys high.*



*The plan form of the elevation is a gently curving s-shaped form, so that the distance of the building from the street boundary varies between 2.4 and 13.6 metres. The façade will be glazed with blue/green glass. This building would have some effect on views to the north-west from within or across the Cemetery. Given that the Cemetery has no space for further interments, the number of people drawn to visit the site is limited. The proposal will not diminish the heritage significance of the South Head Cemetery; it will complement and have an acceptable effect on the Cemetery's setting.*

*The development will have no impact upon the heritage items within its vicinity.*

### **Recommendation**

*Approval; no heritage conservation conditions are required.*

*It should be noted that the "Photographs of Existing Buildings and Surrounds" prepared by GSA Planning, dated September 2012 and included in the Development Application documentation as part of Annexure M satisfies the requirement of Standard Condition BB4 for recording insignificant items.*

A copy of the above-mentioned photographic recording of the existing buildings and surrounds has been forwarded to the local history library.

The proposal is considered to be satisfactory in terms of heritage related issues.

Subsections (e) & (f) of Clause 33 state:

- (e) Embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.*
- (f) Retain, wherever reasonable, major existing trees.*

Council's Tree and Landscaped Officer considers the proposed landscaping of the site and nature strips including the proposed removal of a number of existing trees from the site to be satisfactory, subject to **Conditions A.8, B.1-B.3, C.14 & C.15**.

### **Clause 34 Visual and acoustic privacy**

*The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:*

- (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping.*
- (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.*

*Note. The Australian and New Zealand Standard entitled AS/NZS 2107-2000, Acoustics—Recommended design sound levels and reverberation times for building interiors and the Australian Standard entitled AS 3671-1989, Acoustics—Road traffic noise intrusion—Building siting and construction, published by Standards Australia, should be referred to in establishing acceptable noise levels.*

Council's Urban Design Planner has provided the following comments in this regard:

*The proposal meets these requirements.*

Objections have been received from the owners of 107 New South Head Rd and 1/2A Burge St, Vaucuse on the basis of loss of visual privacy.

In considering this issue, the following planning principle established in the Meriton Properties Management P/L v Sydney City Council (2004) NSWLEC 313), has been referred to:

*When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space. Most planning instruments and development control plans acknowledge the need for privacy, but leave it to be assessed qualitatively. Numerical guidelines for the separation of dwellings exist in the Australia-wide guideline, AMCORD; as well as in the New South Wales-specific Residential Flat Design Code attached to SEPP 65. AMCORD recommends a separation of 9 m between habitable rooms. The Residential Flat Design Code recommends increasing separation between buildings as they get taller. For buildings up to three storeys, it suggests 12 m between habitable rooms and balconies, 9 m between a habitable and non-habitable room and 6 m between non-habitable rooms. For tall buildings (such as the proposal) it suggests 24m between habitable rooms, 18m between habitable rooms and non-habitable rooms, and 12m between non-habitable rooms.*

*Generalised numerical guidelines such as above, need to be applied with a great deal of judgment, taking into consideration density, separation, use and design. The following principles may assist:*

- The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities, there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities, it is more difficult to protect privacy.*
- Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development, it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)*
- The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.*
- Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.*
- Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.*
- Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and*

*planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.*

- *Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.*
- *In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.*

Further, regard has been given to the following performance criteria stipulated under section 5.8 of Woollahra RDCP 2003:

- *C5.8.5 states that windows in habitable rooms with a direct sightline to habitable room windows in an adjacent dwelling within 9 m are to be screened by (a) being offset, (b) incorporating planter boxes, louvres or other devices, (c) translucent glazing to 1.5m above floor level, (d) using fixed translucent glazing or (e) sill heights above 1.5m in height.*
- *C 5.8.6 requires balconies, terraces, decks, roof terraces and other like areas within a development are suitably screened to prevent direct views into habitable rooms or private open space of adjoining and adjacent dwellings.*
- *C5.8.6A requires privacy screening to be integrated so as to not impact upon bulk and scale or views from adjoining properties.*
- *C5.8.7 seeks to eliminate windows and balconies of an upper-level dwelling overlooking the private open space of a lower level dwelling within the same development.*
- *C5.8.8 requires balcony design to consider privacy for occupants when viewed from the street.*

### ***Visual privacy-adjoining properties***

Having regard to the above, the following consideration has been given to the proposal in terms of its impact upon the visual privacy of adjoining properties:

#### **110-112 Old South Head Rd (the adjoining semi-detached dwelling-houses to the north-east):**

- The distance of separation between the north-eastern elevation of Building 1 and the adjoining property is a minimum of 5.6-9.6 m.
- There are no balconies or roof terraces proposed to the north-eastern elevation of the proposal.
- The windows, doors and external stairs to the central section of the north-eastern elevation are adjacent to the front of the adjoining property away from the principal private open space area located at the rear. It is considered that no significant loss of visual privacy to the front section of the adjoining property will occur due to ground level differences, boundary fencing and landscaping adjacent to the north-eastern side boundary.
- The proposed windows to the north-western (rear) elevation are orientated towards the rear boundary of the subject site and as such, lines of sight to the rear of the adjoining properties would be sufficiently oblique to mitigate significant overlooking.

1-9 Laguna St (the properties on the opposite side of Laguna St to the south-west):

- The distance of separation between the south-western elevations of Buildings 1 & 2 and the adjoining properties is at least 21-24 m. These distances of separation are considered to be adequate in terms of ensuring that the visual privacy of these properties will not be significantly affected by the proposal notwithstanding the unscreened balconies and untreated habitable room windows to the Laguna St elevation and trafficable roof top pathways.
- The proposed trafficable roof top landscaped areas are setback a further 2.5-3 m in from the outer south-east and edge of the building and landscaping to approximately half the recess width. This will assist in screening lines of sight to these adjoining properties.

105-129 New South Head Rd (the adjoining properties to the north-west):

- The distance of separation between the north-western elevation of Building 2 (containing the 14 self-contained dwellings) and the adjoining properties to the north-west (105-113 New South Head Rd) is 6 m with the exception of the unscreened terraces/courtyards at Ground Floor Level which are setback 3.4 m. It is considered that these Ground Floor Level terraces/courtyards do not represent any significant potential for overlooking to the adjoining properties (109-113 New South Head Rd) as they will be approximately level with the rear of the adjoining properties with lines of sight adequately screened by boundary fencing, a large garage to the rear of 109 New South Head Rd, existing landscaping to the rear of 111 New South Head Rd and proposed substantial landscaping this adjacent to the north-western boundary including a continuous row of 2-15 m high evergreen species.

The above-ground balconies of Building 2 contain adequate louvre privacy screening.

Lines of sight from untreated habitable room (bedrooms excluded) windows to the north-western elevation of Building 2 to the private open space areas and rear elevation windows of the adjoining properties within 12 m will be suitably screened by the proposed landscaping, boundary fencing and garaging to the rear of 105, 107 & 109 New South Head Rd with the exception of the dining/living rooms of Units 1.01 & 1.02 and the kitchens to 1.02 & 2.02. The privacy treatment of these windows is recommended (see **Condition C.1a**). Bedroom windows are not considered to pose a significant overlooking threat due to fundamental need to maintain internal privacy whilst in use via curtains/blinds.

- It is considered that Building 3 (housing the communal dining room and kitchen) does not represent any potential for significant overlooking the adjoining properties to the north-west (113-117 New South Head Rd) as the north-western elevation only contains clerestory windows with a sill height of 4.2 m.
- The distances of separation between the balconies, habitable windows and trafficable roof areas to the north-western elevation of Building 1 (housing the residential care facility) and the rear boundaries of the adjoining properties to the north-west are 18.6-40 m. These setbacks together with the existence of garages and landscaping adjacent to the rear boundaries of a number of the adjoining properties and the substantial landscaping proposed adjacent to the north-western boundary, which includes 3-30 m high evergreen, predominantly native shrubs and trees, combine to adequately mitigate overlooking to the adjoining properties notwithstanding the unscreened balconies and habitable room windows to the rear elevation.

753-759 Old South Head Rd & 2A Burge St (the adjoining properties to the south-east):

- The distances of separation between the south-eastern (Old South Head Rd) elevation of Building 1 (housing the residential care facility) and these adjoining properties is at least 27.5-36 m. These distances of separation are considered to be adequate in terms of ensuring that the visual privacy of these properties will not be significantly affected by the proposal notwithstanding the unscreened habitable room windows to the Old South Head Rd elevation.
- The proposed gymnasium and trafficable roof top landscaped areas are setback a further 2.5-3 m from the outer south-east and edge of the building and landscaping to approximately half the recess width will assist in screening lines of sight to these adjoining properties.

The proposal, as conditioned, is considered to be satisfactory in terms of maintaining the visual privacy of surrounding residential properties.

***Visual privacy-internal***

The proposal is considered to be satisfactory in terms of internal visual privacy with windows and private open space areas of individual units of the serviced self-care housing and the individual bedrooms of the residential care facility adequately separated or screened.

***Acoustic privacy/noise***

Council's Environmental Health Officer has the following comments in relation to this issue:

*Reference is made to Health Referral Response of 8 October, 2012 where comments were provided in relation to an acoustic report prepared by Acoustic Logic titled Markmoran at Vacluse Seniors Housing Development DA Acoustic Report, Revision 5 Doc. Ref. No. 20120316.1/2305A/R5/JZ dated 21 August 2012.*

*The following recommendations were made:*

***Traffic Noise***

***Recommendation***

1. *The glazing thickness requirements for the windows of the proposed development as detailed in Tables 4 & 5 of the report to satisfy the acoustic requirements of Clause 102 (Road) of the Infrastructure SEPP being fully incorporated into the building design.*
2. *Section 3.4 of the report specifically mentioned that internal noise levels would be primarily as a result of noise transfer through windows, doors and the roof. While the report has recommended glazing thicknesses to satisfy acoustic requirements, no reference has been made to the doors and roof structure of the proposed development complying with the acoustic requirements of Clause 102 (Road) of the Infrastructure SEPP. It is recommended that Acoustic Logic address the acoustic transfer of noise through the doors and roof structure of the proposed buildings.*
3. *Internal noise levels due to air conditioning and mechanical ventilation plant has not been assessed. Australian Standard 2107:2000 "Acoustics-Recommended design levels and reverberation times for building interiors" recommends the satisfactory and maximum internal noise levels for building interiors based on room designation and location of the development relative to external noise sources; the standard recommends reverberation times in these spaces should be minimised as far as possible for noise control.*

## ***Mechanical Services***

### ***Recommendation***

- 1. The acoustic report is to be amended to reflect Woollahra Council's acoustic standard (noise criterion) for mechanical plant and equipment and provide predicted noise levels based on sound power levels from the preliminary selected equipment. The amended report must present the resultant noise levels (individual and cumulative impact) at residential receivers from the operation of the mechanical services plant with and without proposed acoustic controls.*
- 2. The amended report must indicate that the predicted resultant noise from mechanical services will be reviewed during the detailed design stage, when final equipment selections have been made, and prior to the issue of a construction certificate. At this stage specific noise control measures must be detailed.*

## ***Car Park Noise & Noise Generated by Additional Cars on Public Roads***

### ***Recommendation***

- 1. The predicted noise levels for car park noise cannot be accepted until such time that Acoustic Logic clarify the discrepancy in vehicle movements as detailed in Section 4.3.2 and Section 4.3.3 of the report based on the assumption that vehicle movements were calculated on the total car spaces of the proposed car park when assessing noise generated by additional cars on public roads.*

## ***Construction Noise Assessment Impacting on Residential Receivers***

### ***Recommendation***

- 1. Documentation (forming part of the amended acoustic report) providing an assessment in managing impacts of noise from the demolishing of the existing dwellings 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 assessment for evaluating performance and compliance of resultant noise from demolishing works of the existing dwellings. 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.*
- 2. Documentation (forming part of the amended acoustic report) providing an assessment of the duration and intensity of construction noise activity. The acoustic study should identify construction noise goals, the nature and duration of construction, the impact on residential receivers and noise mitigation strategies where required having regard to the NSW Construction Noise Guidelines.*

*In response to the above recommendations, Acoustic Logic has now provided a letter to supplement the acoustic report commenting on the acoustic (letter dated 4 December, 2012; Project No: 20120316.1/0412A/R2/TT "Markmorán at Vacluse – Seniors Housing Development – Response to Council Queries dated 8 October 2012").*

*The letter covers the following areas of concern:*

- *External noise impacts on the development;*
- *Noise generated by the development; and*
- *Construction noise.*

**External noise impacts upon the development**

***Traffic Noise***

*Acoustic Logic has satisfactorily addressed the issues raised concerning traffic noise.*

***Noise from air conditioning systems (internal areas)***

*Acoustic Logic has satisfactorily addressed the issues raised concerning noise from air conditioning systems.*

**Noise generated by the development**

***Mechanical Services***

*Acoustic Logic has satisfactorily addressed the issues raised concerning noise from mechanical services.*

*Note: The night time background noise level at the site is 31 dBA (L90) making the noise emission goal of 36 dBA (+5dBA). Through treatments outlined in letter dated 4 December, 2012; Project No: 20120316.1/0412A/R2/TT “Markmoran at Vaocluse – Seniors Housing Development – Response to Council Queries dated 8 October 2012”, noise levels of less than 36 dBA at the nearest residences are predicted. In fact a noise level of 31-34 dBA (Leq) is predicted.*

***Car park noise and noise generated by additional traffic on public roads***

*Acoustic Logic has satisfactorily addressed the issues raised concerning car park noise and noise generated by additional traffic on public roads.*

**Construction Noise**

*Acoustic Logic has satisfactorily addressed the issues raised concerning construction noise.*

*Based on the information provided for in letter to supplement the acoustic report commenting on the acoustic (letter dated 4 December, 2012; Project No: 20120316.1/0412A/R2/TT “Markmoran at Vaocluse – Seniors Housing Development – Response to Council Queries dated 8 October 2012”, it is recommended that the development application be conditioned to provide the following:*

*A Construction Noise & Management Plan is to be prepared prior to the commencement of on-site works; the Plan is to identify all construction noise management strategies including but not limited to the following:*

- *The use of attended noise monitoring which offers the advantage of immediate identification of noise or vibration exceedances at the receiver and ameliorative action required to minimise the duration of the exposure.*
- *Development of a works schedule which is to identify the type of machinery and equipment that is to be used at the development site and provide for predicted noise impacts at nearest sensitive residential receivers.*
- *Detail all noise mitigation strategies to be used at the development site, including acoustic screening/enclosures, temporary or otherwise around machinery and equipment during each phase of demolition and construction works and a Consultation/Complaints Handling Procedure.*

The above-mentioned condition is addressed via **Condition D.13**.

The acoustic report submitted with the development application recommends glazing specifications including glazing thicknesses and installation of acoustic seals designed to protect the acoustic privacy of adjoining properties.

The private balconies and terraces are considered to be of reasonable dimensions such that they will not be able to accommodate large gatherings and therefore no significant loss of acoustic privacy to surrounding residential properties is envisaged assuming normal behaviour is observed by the occupants of the development and their guests.

The large communal roof top landscaped areas are sufficiently above-ground and separated from adjoining residential properties such that the anticipated noise levels generated by the use by the occupants of the development and their guests will not significantly affect the acoustic privacy of adjoining properties.

Whilst the ground level communal plazas, courtyards, playground and garden may facilitate substantial numbers of people and therefore generate substantial levels of noise to the adjoining New South Head Rd properties, this will be generally limited to daylight hours and likely to be less than that generated by the school students of the former high school. Buildings 2 & 3 will provide a degree of noise attenuation to the south-western half of the adjoining properties (105-115 New South Head Rd). The existing garage structures to the rear of the majority of the adjoining properties (105-109 & 115-129 New South Head Rd) and existing rear boundary fencing to the adjoining properties will also provide a degree of noise attenuation as the ground level communal courtyard areas and playground are approximately 2 m below the ground level of the adjoining properties (117-129 New South Head Rd).

**Conditions C.21, C.28, & I.12-I.14** require the implementation and compliance with the acoustic attenuation measures stipulated in the acoustic report and supplementary letter, the acoustic attenuation of the mechanical plant and equipment and general noise control.

**Conditions A.5 & C.28** require the implementation of RMS recommendations relating to the mitigation of road traffic noise impacts upon the interior of the residential care facility (Building 1). Subject to the above-mentioned conditions, the proposal is considered to be satisfactory in terms of mitigating noise levels and maintaining the acoustic privacy of surrounding residential properties and residents of the subject development.

#### ***Acoustic privacy-internal***

The proposal is considered to be satisfactory with regard to internal acoustic privacy.



## Clause 35 Solar access and design for climate

*The proposed development should:*

- (a) *Ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space.*
- (b) *Involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction.*

Council's Urban Design Planner has provided the following comments in this regard:

*The proposal meets these requirements.*

With regard to midwinter overshadowing to adjoining properties, the shadow diagrams submitted with the application indicate that whilst the proposal will cast shadow upon the adjoining properties on the opposite side of Laguna St (108 Old South Head Rd & 3-9 Laguna St) during winter morning periods and 757-759 Old South Head Rd & 2A Burge St during winter afternoon periods, solar access will be maintained to these properties in accordance with Council's requirements (a minimum of two hours to substantial portions of main ground level private open space areas). Accordingly, the overshadowing to adjoining properties is not considered to be significant.

With regard to solar access to the development, direct winter solar access for at least 3 hours will be provided to 11 of the 14 (78%) of the self-contained dwellings including private open space areas in compliance with the 70% deemed to satisfy requirement stipulated under Clause 50 (e), to approximately half of the residential care facility beds including private open space areas and to internal communal areas via atriums (there is a minimum requirement specified under Clause 48). This excellent solar access is achieved by the proposed buildings having a north-westerly orientation.

The substantial communal landscaped open space areas proposed to the northern section of the site will receive abundant winter solar access.

Council's Team Leader-Environment and Sustainability has provided the following comments with regard to the energy efficiency and natural ventilation attributes of the proposal:

*Section 1.2 of the Cundall ESD report lists the general principles that are to be followed to exceed the minimum requirements. Section 2 of the Cundall ESD report provides more details on the initiatives that will be incorporated into the design to achieve a good ESD outcome. These include:*

- *Insulation of walls, floors and ceilings*
- *Low-e glazing on windows*
- *Skylights to provide daylight*
- *Overhangs and external shading devices*
- *Natural ventilation*
- *CO monitoring in Carparks*
- *Variable Speed Drives to reduce energy use for fans*
- *Building Management System (BMS) energy efficiency controls*
- *Centralised VRV system for heating and cooling*

- *Centralised gas hot water system*
- *Efficient light fittings including LEDs and fluorescent*
- *Day light dimmer timers and motion sensors in car parks, common areas, and plant rooms*
- *High energy efficiency appliances*

*If these initiatives are incorporated at the detailed design stage, a good ESD outcome will be achieved.*

**Condition C.2** requires the implementation of the above-mentioned measures.

Additionally, the proposal is considered to be satisfactory with regard to energy efficiency and ventilation for the further following reasons:

- The site has excellent communal facilities on-site, access to public transport and will be within walking and wheel chair accessible distance to local shops and services thereby reducing the demand for private vehicle trips.
- The proposal satisfies BASIX requirements.
- Adequate natural ventilation will be provided to all of the self-contained dwellings minimising the need for air conditioning.

### **Clause 36 Stormwater**

*The proposed development should:*

- (a) *Control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas*
- (b) *Include, where practical, on-site stormwater detention or re-use for second quality water uses.*

Council's Urban Design Planner has provided the following comments in this regard:

*The proposal meets these requirements.*

The proposal will provide approximately 2530 m<sup>2</sup> of deep soil soft landscaped area which will provide significant on-site water infiltration. Additionally, the proposal incorporates a 150,000 litre rainwater tank for watering landscaped areas.

Council's Development Engineer considers the proposal to be satisfactory in terms of stormwater management, subject to **Conditions C.6 & C.13**.

### **Clause 37 Crime prevention**

*The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:*

- (a) *Site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street.*
- (b) *Where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked.*
- (c) *Providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.*

Council's Urban Design Planner has provided the following comments in this regard:

*The proposal presents challenges, in that it allows the public onto the site and provides contributing public realm to the wider community. This approach is admirable, but also results in design and management issues. Generally the proposal resolves these issues.*

Residents of adjoining New South Head Road properties to the north-west are concerned that general public accessibility to the site will compromise their security. The amended landscape plan submitted to Council on 30 January 2013 to address concerns raised by Council's Urban Design Planner included the provision of gates limiting the public access to the site to the lower and upper plazas off Laguna Street and to prevent access to the communal open space areas further to the north-east that will be accessible only to occupants of the development, their visitors and staff. It is considered that these amendments will act as an adequate barrier to the general public accessing the north-western boundary of the site and the adjoining properties.

The proposal provides multiple windows and balconies on all elevations which will facilitate casual surveillance by residents of the publicly accessible plaza areas, the communal open space areas and the building entries. However, it is recommended that this casual surveillance be reinforced with the following measures:

- Lighting along the pathways through the communal open space areas and to the building entries.
- Intercom systems and security doors provided to the building and carpark entries.
- A peep hole is to be provided to the front door to each of the self-contained dwellings.

The above recommendations are addressed by **Conditions C.4**).

### **Clause 38 Accessibility**

*The proposed development should:*

- (a) *Have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities.*
- (b) *Provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.*

Council's Urban Design Planner has provided the following comments in this regard:

*The design connects the proposal and the local neighbourhood centre adding and contributing to both. This approach is supported. The proposal meets the requirements regarding access friendly gradients to the bus stops and the Village Shops.*

*The amended proposal's principal open space to the west of the main building is a strong design statement. This space is now separated into clearly defined parts. Additional seating to the top of the stairs at the edge of the raised garden beds defines the upper space as clearly being of a different nature to the more public space adjacent to Laguna Street.*

*Additional gating in the amended scheme clearly delineates where the semi-public space ends and private space begins. This provides clarity as to where is public where is semi-public and where is private. With these delineations the scheme is easier for the visitors and residents to understand.*

*The visual connection between the Vacluse village centre and the proposal has been improved, with pedestrian movement flowing into the scheme.*

*The entry to the car park has been realigned and the cross-over width reduced.*

As discussed previously under the **Clause 26 Location and access to facilities**, an Access Report has been submitted with the DA which confirms that the development, as conditioned, will have adequate access to public transport services and local facilities. The subject site is within 400 m, with accessible gradients, to the Vacluse shops on New South Head Rd and 3 bus stops which provide public transport to Bondi Junction, Dover Heights and Rose Bay shopping centres. However, the report states that the footpath at the corner of New South Head Rd and Laguna St does not comply with AS1428 with regard to wheelchair access.

The supplementary traffic report states that 2 minibuses will be provided to transport residents to local shops and services. The Lower Ground Floor plan indicates 2 minibuses parking spaces.

Council's Traffic and Development Engineers has provided the following comments in relation to traffic, parking, pedestrian safety & access issues:

*Council's Traffic section has reviewed the submitted Development Application and does not have any objection to the proposed development in terms of traffic or parking matters and on the basis there is to be no change to parking restrictions surrounding the site to suit the needs of the development.*

*Signalised Pedestrian Crossing – The development will increase pedestrian movements in the area, in particular in the vicinity of the Vacluse Shopping Centre.*

*The Access Report by Accessibility Solutions (NSW) P/L dated 31 August 2012 has identified the bus routes, bus stops and pedestrian desire lines surrounding the site. One key issue only briefly referred to in the report is the matter of residents crossing New South Head Road to access the bus stops and shops.*

*The existing arrangement is via a pedestrian refuge in New South Head Road, but with the increase in pedestrian usage as a result of the development and to provide adequate safety while crossing New South Head Road, the applicant is to install a signalised pedestrian crossing.*

*The crossing and the exact location are to be determined in consultation with the community and submitted and approved by the RMS and Council's Local Traffic Committee.*

*Old South Head – Access to the porte cochere will require 2 vehicle crossings. The southern crossing, which is to be 'entry only', is to have a width of 6.0m. The northern crossing, which is to be 'exit only', is to have a width of 4.5m.*

*The crossings are to be constructed in accordance with Council's standard drawing RF2C.*

*All redundant vehicle crossings are to be removed and the kerb & gutter are to be fully restored to match the existing. The entire footpath fronting the site on Old South Head Road and Laguna Street are to be fully removed and reconstructed. Works are to be in accordance with Council's standard drawing RF3.*

*Laguna Street – It is proposed to construct a new crossing to access the underground parking. The new vehicular crossing on Laguna Street is to have a width of 6.0m including new layback and gutter in accordance with Council's standard drawing RF2C.*

*Note: All crossings are to be constructed at right angles to the kerb and all vehicles accesses are to have splays (2.0m X 2.0m) in accordance with AS2890.1*

*New South Head Road – The footpath on the corner of New South Head Road and Laguna Street is to be reconstructed as per the advice in the Access Report By Accessibility Solutions (NSW) P/L dated 31 August 2012. Details of the reconstruction are to be submitted with the S138 Roads Act Application.*

*Bus Shelters – It has been identified that 3 bus stops within the municipality will cater for the needs of the development. It is envisioned that residents of the proposed development will use the busses with high frequency. However, 2 of the bus stops do not provide shelter.*

*To accommodate the residents of the development and the public, the bus stop on Old South Head near the corner with Laguna Street and the bus stop on New South Head Road adjacent to No. 70 New South Head Road are to be provided with shelters.*

*The shelters are to be constructed in accordance with Council's standard bus shelter specifications which will be provided with the S138 Application.*

In accordance with the above advice, the proposal is considered to be satisfactory in terms of traffic, parking, pedestrian safety & access issues, subject to the provision of a signalised pedestrian crossing to New South Head Road, the provision of shelter to 2 existing bus stops at New & Old South Head Rds, the upgrade of the non-compliant section of the footpath and kerb ramp at the corner of New South Head Rd and Laguna St and the reduction to driveway widths (see **Conditions C.6 & F.12**).

### **Clause 39 Waste management**

*The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.*

Council's Urban Design Planner has provided the following comments in this regard:

*The proposal meets these requirements.*

The waste management plan submitted with the application recommends the provision of either 7 x 240 L or 4 x 660 L bins for recyclable waste to be collected by a private waste contractor twice weekly.

Council's standard conditions in relation to waste management are also recommended (see **Conditions C.17 & C.18**).

#### **Clause 40 Development standards**

- (1) A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.*
- (2) Site size: The size of the site must be at least 1,000 m<sup>2</sup>.*
- (3) Site frontage: The site frontage must be at least 20 m wide measured at the building line.*

#### **Site area**

The site has an area of 12,030m<sup>2</sup> which complies with the minimum site area development standard of 1000m<sup>2</sup>.

#### **Site frontage**

The site has a frontage to Old South Head Road of 184.5 m and a frontage to Laguna St of 84 m which comply with the minimum site frontage development standard of 20 m.

#### **Clause 41 Standards for hostels and self-contained dwellings**

- (1) A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of a hostel or self-contained dwelling unless the proposed development complies with the standards specified in Schedule 3 for such development.*

#### ***Schedule 3 Standards concerning accessibility and useability for hostels and self-contained dwellings:***

##### ***Part 1 Standards applying to hostels and self-contained dwellings***

*The standards set out in this Part apply to any seniors housing that consists of hostels or self-contained dwellings.*

##### ***2 Siting standards***

###### ***(1) Wheelchair access***

*If the whole of the site has a gradient of less than 1:10, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road.*

###### ***(2) If the whole of the site does not have a gradient of less than 1:10:***

- (a) the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10, or 50%, whichever is the greater, and*
- (b) the wheelchair access provided must be by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road or an internal road or a driveway that is accessible to all residents.*

*Note. For example, if 70% of the site has a gradient of less than 1:10, then 70% of the dwellings must have wheelchair access as required by this subclause. If more than 50% of the site has a gradient greater than 1:10, development for the purposes of seniors housing is likely to be unable to meet these requirements.*

### **(3) Common areas**

*Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development.*

## **3 Security**

*Pathway lighting:*

- (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and*
- (b) must provide at least 20 lux at ground level.*

## **4 Letterboxes**

*Letterboxes:*

- (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel (within the meaning of AS 1428.1), and*
- (b) must be lockable, and*
- (c) must be located together in a central location adjacent to the street entry or, in the case of self-contained dwellings, must be located together in one or more central locations adjacent to the street entry.*

## **5 Private car accommodation**

*If car parking (not being car parking for employees) is provided:*

- (a) car parking spaces must comply with the requirements for parking for persons with a disability set out in AS 2890, and*
- (b) 5% of the total number of car parking spaces (or at least one space if there are fewer than 20 spaces) must be designed to enable the width of the spaces to be increased to 3.8 metres, and*

- (c) *any garage must have a power-operated door, or there must be a power point and an area for motor or control rods to enable a power-operated door to be installed at a later date.*

## **6 Accessible entry**

*Every entry (whether a front entry or not) to a dwelling, not being an entry for employees, must comply with clauses 4.3.1 and 4.3.2 of AS 4299.*

## **7 Interior: general**

- (1) *Internal doorways must have a minimum clear opening that complies with AS 1428.1.*
- (2) *Internal corridors must have a minimum unobstructed width of 1,000 millimetres.*
- (3) *Circulation space at approaches to internal doorways must comply with AS 1428.1.*

## **8 Bedroom**

*At least one bedroom within each dwelling must have:*

- (a) *an area sufficient to accommodate a wardrobe and a bed sized as follows:*
  - (i) *in the case of a dwelling in a hostel—a single-size bed,*
  - (ii) *in the case of a self-contained dwelling—a queen-size bed, and*
- (b) *a clear area for the bed of at least:*
  - (i) *1,200 millimetres wide at the foot of the bed, and*
  - (ii) *1,000 millimetres wide beside the bed between it and the wall, wardrobe or any other obstruction, and*
- (c) *2 double general power outlets on the wall where the head of the bed is likely to be, and*
- (d) *at least one general power outlet on the wall opposite the wall where the head of the bed is likely to be, and*
- (e) *a telephone outlet next to the bed on the side closest to the door and a general power outlet beside the telephone outlet, and*
- (f) *wiring to allow a potential illumination level of at least 300 lux.*

## **9 Bathroom**



*(1) At least one bathroom within a dwelling must be on the ground (or main) floor and have the following facilities arranged within an area that provides for circulation space for sanitary facilities in accordance with AS 1428.1:*

*(a) a slip-resistant floor surface,*

*(b) a washbasin with plumbing that would allow, either immediately or in the future, clearances that comply with AS 1428.1,*

*(c) a shower that complies with AS 1428.1, except that the following must be accommodated either immediately or in the future:*

*(i) a grab rail,*

*(ii) portable shower head,*

*(iii) folding seat,*

*(d) a wall cabinet that is sufficiently illuminated to be able to read the labels of items stored in it,*

*(e) a double general power outlet beside the mirror.*

*(2) Subclause (1) (c) does not prevent the installation of a shower screen that can easily be removed to facilitate future accessibility.*

## **10 Toilet**

*A dwelling must have at least one toilet on the ground (or main) floor and be a visitable toilet that complies with the requirements for sanitary facilities of AS 4299.*

## **11 Surface finishes**

*Balconies and external paved areas must have slip-resistant surfaces.*

*Note. Advice regarding finishes may be obtained from AS 1428.1.*

## **12 Door hardware**

*Door handles and hardware for all doors (including entry doors and other external doors) must be provided in accordance with AS 4299.*

## **13 Ancillary items**

*Switches and power points must be provided in accordance with AS 4299.*

## **Part 2 Additional standards for self-contained dwellings**

### **14 Application of standards in this Part**

*The standards set out in this Part apply in addition to the standards set out in Part 1 to any seniors housing consisting of self-contained dwellings.*

## **15 Living room and dining room**

*(1) A living room in a self-contained dwelling must have:*

*(a) a circulation space in accordance with clause 4.7.1 of AS 4299, and*

*(b) a telephone adjacent to a general power outlet.*

*(2) A living room and dining room must have wiring to allow a potential illumination level of at least 300 lux.*

## **16 Kitchen**

*A kitchen in a self-contained dwelling must have:*

*(a) a circulation space in accordance with clause 4.5.2 of AS 4299, and*

*(b) a circulation space at door approaches that complies with AS 1428.1, and*

*(c) the following fittings in accordance with the relevant subclauses of clause 4.5 of AS 4299:*

*(i) benches that include at least one work surface at least 800 millimetres in length that comply with clause 4.5.5 (a),*

*(ii) a tap set (see clause 4.5.6),*

*(iii) cooktops (see clause 4.5.7), except that an isolating switch must be included,*

*(iv) an oven (see clause 4.5.8), and*

*(d) "D" pull cupboard handles that are located towards the top of below-bench cupboards and towards the bottom of overhead cupboards, and*

*(e) general power outlets:*

*(i) at least one of which is a double general power outlet within 300 millimetres of the front of a work surface, and*

*(ii) one of which is provided for a refrigerator in such a position as to be easily accessible after the refrigerator is installed.*

## **17 Access to kitchen, main bedroom, bathroom and toilet**

*In a multi-storey self-contained dwelling, the kitchen, main bedroom, bathroom and toilet must be located on the entry level.*

## **18 Lifts in multi-storey buildings**

*In a multi-storey building containing separate self-contained dwellings on different storeys, lift access must be provided to dwellings above the ground level of the building by way of a lift complying with clause E3.6 of the Building Code of Australia.*

## **19 Laundry**

*A self-contained dwelling must have a laundry that has:*

- (a) a circulation space at door approaches that complies with AS 1428.1, and*
- (b) provision for the installation of an automatic washing machine and a clothes dryer, and*
- (c) a clear space in front of appliances of at least 1,300 millimetres, and*
- (d) a slip-resistant floor surface, and*
- (e) an accessible path of travel to any clothes line provided in relation to the dwelling.*

## **20 Storage for linen**

*A self-contained dwelling must be provided with a linen storage in accordance with clause 4.11.5 of AS 4299.*

## **21 Garbage**

*A garbage storage area must be provided in an accessible location.*

The submitted Access Report states that compliance with these standards has either been achieved at the development application stage or will be at construction certificate stage. **Condition C.3** ensures that compliance with the standards is achieved.

## **48 Standards that cannot be used to refuse development consent for residential care facilities**

*A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a residential care facility on any of the following grounds:*

- (a) **building height:** if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys), or*
- (b) **density and scale:** if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less,*
- (c) **landscaped area:** if a minimum of 25 square metres of landscaped area per residential care facility bed is provided,*
- (d) **parking for residents and visitors:** if at least the following is provided:*
  - (i) 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and*
  - (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and*
  - (iii) 1 parking space suitable for an ambulance.*

## **Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings**

*A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a self-contained dwelling (including in-fill self-care housing and serviced self-care housing) on any of the following grounds:*

- (a) **building height:** if all proposed buildings are 8 m or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys).
- (b) **density and scale:** if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less.
- (c) **landscaped area:** if:
  - (i) in the case of a development application made by a social housing provider-a minimum 35 m<sup>2</sup> of landscaped area per dwelling is provided, or
  - (ii) in any other case-a minimum of 30% of the area of the site is to be landscaped.
- (d) **Deep soil zones:** if, in relation to that part of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site (the **deep soil zone**). Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 m.
- (e) **solar access:** if living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.
- (h) **parking:** if at least 0.5 car spaces for each bedroom where the development application is made by a person other than a social housing provider.

## Building Height

Building 1 involves a maximum height of approximately 18.4 m. Building 2 involves a maximum building height of approximately 12 m. As discussed previously, the height of the proposed buildings is considered to be satisfactory within the local context and in terms of residential amenity impacts. The issue of height is further discussed as part of the consideration of the SEPP 1 objection to vary Council's 9.5 m height standard under the section **Height**.

## Density and Scale

The total floor space ratio for the proposed development is approximately 1.81:1 (1.71:1 above ground including void areas). There is no maximum floor space ratio applicable to the site. As discussed previously, the scale and density of the proposal is considered to be satisfactory within the local context and in terms of residential amenity impacts.

## Landscaped Area/ Deep Soil Zone

The proposal provides for approximately 4020 m<sup>2</sup> of landscaped area calculated in accordance with the following definition:

*landscaped area means that part of the site area that is not occupied by any building and includes so much of that part as is used or to be used for rainwater tanks, swimming pools or open-air recreation facilities, but does not include so much of that part as is used or to be used for driveways or parking areas.*

Whilst this is less than the deemed to satisfy requirement of 5675 m<sup>2</sup> (227 residential care beds x 25 m<sup>2</sup>), it is greater than the 30% of the site area (3609 m<sup>2</sup>) deemed to satisfy requirement stipulated under Clause 50 (c)(ii).

If the 2204 m<sup>2</sup> of landscaped areas above the underground levels (including the plazas and playground) and the 1277 m<sup>2</sup> of communal landscaped area on top of the roof of Building 1 (including extensive garden planters with pathways and deck, a mini-golf course and a bowling/croquet green), a total of approximately 7104 m<sup>2</sup> of communal landscaped area is provided. This is considered to be an adequate level of communal landscaped area provision for the development.

The landscape plans submitted with the development application state that approximately 18% of the site area will constitute a deep soil zone which is in excess of the 15% deemed to satisfy requirement. A total of approximately 2530 m<sup>2</sup> of deep soil landscaped area will be provided.

The landscaped area provision is considered to be satisfactory in terms of providing sufficient vegetated areas that will provide an attractive external environment, adequate screening, gardening opportunities and sufficient open-air recreation facilities with a northerly aspect to meet the passive recreational needs of occupants.

### **On-Site Parking**

Specifically, the car parking requirements are:

- 1 parking space for each 10 beds in the residential care facility- $227 \times 0.1 = 23$  spaces;
- 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time- $70 \times 0.5 = 35$  spaces;
- 1 parking space suitable for an ambulance; and
- 0.5 car spaces for each bedroom of the self-contained dwellings where the development application is made by a person other than a social housing provider- $25 \text{ beds} \times 0.5 = 13$  spaces.

Total-72 spaces.

The proposal provides a total of 99 car parking spaces including 1 ambulance bay which complies with the deemed to satisfy requirement of 72 spaces including 1 ambulance bay.

### **Solar Access**

The deemed to satisfy solar access requirement will be met for 11 of the 14 (78%) of the self-contained dwellings including private open space areas in compliance with the 70% requirement.

### **14. SEPP 55-Remediation of Land**

Under Clause 7 (1) (a) of SEPP 55-Remediation of Land, consideration has been given as to whether the land is contaminated. Council's Senior Environmental Health Officer has provided the following comments in this regard:

*Comments are provided in relation to site contamination report prepared by GHD Pty Ltd titled Vaucluse High School, Old South Head Road, Vaucluse: Contamination Assessment-Final Report (Ref. No. 21/090/2629/P001 dated 22<sup>nd</sup> April, 2004).*

### **Scope of Investigation**

*The scope of work undertaken by GHD Pty Ltd involved the following:*

- *Desk Top Phase 1 assessment: Title descriptions, historical aerial photos, topography, geology and hydrogeology data, search of WorkCover database and local planning records.*
- *Limited program of soil sampling: Included visual inspection, drilling of 15 boreholes to depths of 1m to 3.5m and collection of soil samples at a variety of depths.*
- *Laboratory analysis of soil samples.*

### **Site History**

*1920-1930 The site appeared as vacant land with the immediate surrounding area appeared undeveloped.*

*1930-1990 The site and surrounds remained largely unchanged; in 1961 the site had been developed and was occupied by a number of commercial buildings. In 1970 buildings of a residential appearance had been constructed and 1986 a large playing field had been developed.*

*1990-1996 No major changes were noted*

*2002 The buildings were clearly visible along with sports field located in the north west corner.*

### **WorkCover**

*No records were found pertaining to the site.*

### **Regulatory Records**

*The site is zoned as 'Special Uses' and the site is not subject to an investigation order, remediation order, voluntary investigation or site audit statement; the Department of Public Works has not given notice; the property is not within a heritage conservation area and no heritage items are situated on the land.*

### **Potential Contamination-Sampling and Analysis**

*Field investigations involving borehole drilling and sampling were undertaken on 30<sup>th</sup> September, 2004. Boreholes were extended to depths ranging from 0.5m to 3.5m. Samples were analysed for Metals, TPH, BTEX, PAHs, OCPs, PCBs and Asbestos. The samples above were analysed against the assessment criteria (HILs thresholds) guidelines provided by the NSW EPA. Even though the site is currently used as a secondary school, given that the site may be potentially rezoned to permit residential use, the site was assessed against exposure setting E 'Parks and Recreational Open Space' and setting A 'Residential' and setting D*

*‘High Density Residential with minimal access to soil’ as published in the “Guidelines for the NSW Site Auditor Scheme”.*

*Analytical results for metals showed that concentrations were all below the most sensitive HIL A (standard residential) and therefore acceptable to HIL D and HIL E criteria. PAH concentrations were below the HIL A criteria. TPH, BTEX, OCPs and PCBs showed that for the majority of soil samples analysed for benzene, toluene, ethylbenzene and xylene (BTEX) and TPH reported concentrations less than the practical quantitation limit of the testing laboratory and below the relevant criteria. Soil samples collected from BH5 at a depth of 1m reported a TPH concentration of 450 mg/kg all of which was C10-C28 fraction; a diesel odour was detected but concentrations of total TPH were below the relevant criteria. Concentrations of OCPs and PCBs were below the laboratory PQL. Asbestos was not detected in the soil samples analysed.*

### **Conclusion**

*No contamination indicators of odours or staining were noted during the field investigations with the exception of a slight odour identified as possibly of diesel origin detected at a depth of 1m below the ground surface within borehole 5; however sampling from this borehole showed that analysed concentrations were below relevant criteria. The source of the diesel odour is unknown but thought to be localised.*

*Water influx was noted at 3 sampling locations at depths of 0.6m-1m however no other water influx was reported at any location and is considered unlikely that the water influx is representative of a continuous aquifer system. Based on the Phase 1 investigation and soil sampling program, it is considered that the site would be considered suitable for its ongoing use as a secondary school and proposed residential use. It is therefore considered that a detailed Phase 2 investigation of the site is not warranted.*

### **Recommendation**

*Any new information which comes to light during demolishing or excavation works which has the potential to alter previous conclusions about site contamination must be notified to Woollahra Council and/or the accredited certifier immediately after discovery; works are to cease until further advised by Council. (Addressed by **Condition E.13**).*

## **15. SEPP (Building Sustainability Index: BASIX) 2004**

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

The development application was accompanied by BASIX Certificate No. 420802M, which commits to environmental sustainability measures relating to thermal comfort, water savings and energy efficiency. As prescribed by Clause 97A of the Environmental Planning and Assessment Regulation 2000, these requirements have been imposed in **Conditions C.22, H.4 and I.2**.

## **16. SREP (Sydney Harbour Catchment) 2005 and accompanying DCP**

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

## 17. Woollahra LEP 1995

Consideration of the provisions of Woollahra LEP 1995 is limited to those matters not addressed above under the sections **12 SEPP 65-Design Quality of Residential Flat Development** and **13 SEPP (Housing for Seniors or People with a Disability) 2004** on the basis that Clauses 6 & 5 respectively of the SEPPs state *in the event of an inconsistency between this Policy and another environmental planning instrument, whether made before or after this Policy, this Policy prevails to the extent of the inconsistency.*

### 17.1 Aims and objectives of WLEP 1995 (Clause 8(5))

Relevant objectives stipulated under Part 1-(2) (2 c) of Woollahra LEP 1995, in relation to community services and facilities, are quoted as follows:

- (i) *to facilitate the provision and equitable distribution of community services necessary to meet the needs of the population*
- (ii) *to provide opportunities for the development of community services and facilities in appropriate areas*

Council's Director Community Services has advised that:

*As reflected in the Woollahra Social & Cultural Plan, it is important to residents of Woollahra that they are able to remain living independently in their community as they age. This is especially relevant to Woollahra as it is an area with an increasing number of older persons. The establishment of housing designed specifically to meet the needs of older persons is one way of addressing this challenge. Without this type of housing many Woollahra residents could be forced to move away from their community as they age.*

The proposed publicly accessible commercial uses including the beauty salon and medical consulting room adjacent to the Laguna Street frontage are considered to be ancillary to the seniors living development and therefore do not represent a prohibited use within the Special Uses zoning.

The proposal, as conditioned, is considered to be consistent with the aims and objectives of the LEP and the relevant objectives of Zone No. 5-(Special Uses Zone).

### 17.2 Height

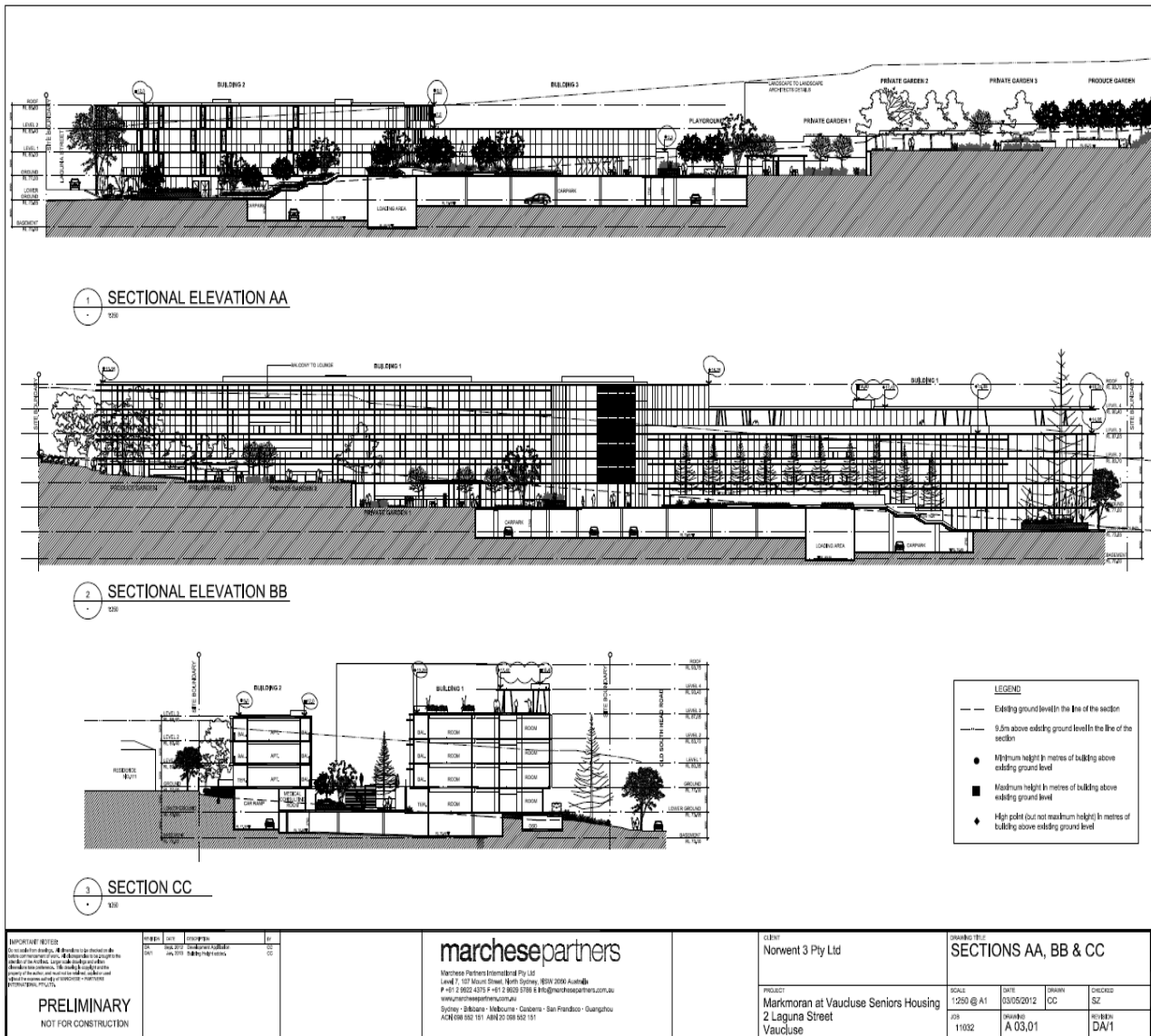
Building 1 involves a maximum height of approximately 18.4 m above the existing ground level which exceeds Council's 9.5 m height standard by as much as 8.9 m.

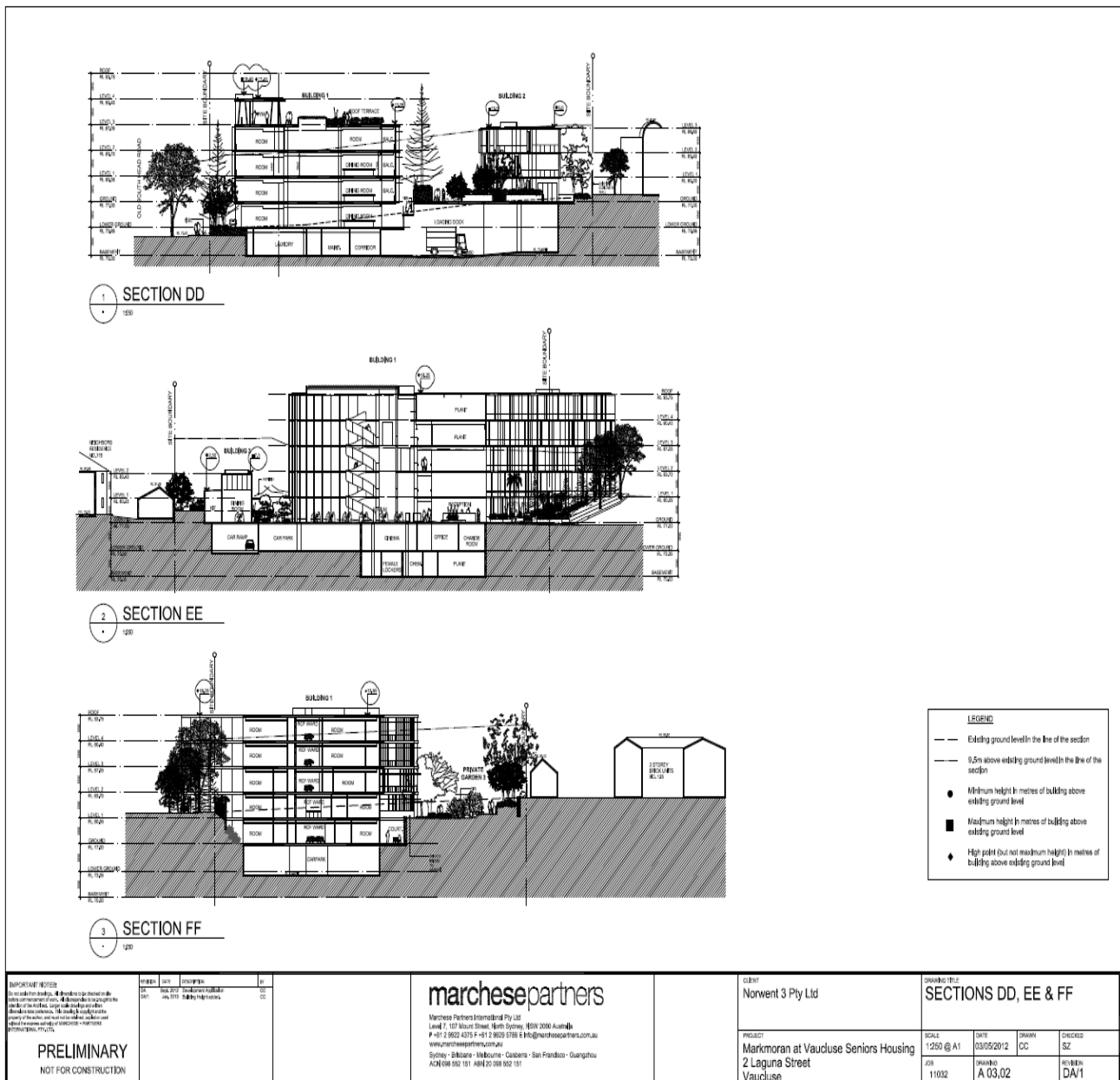
Building 2 involves a maximum building height of approximately 12 m above the existing ground level which exceeds Council's 9.5 m height standard by as much as 2.5 m.

Building 3 involves a maximum building height of approximately 7 m above the existing ground level which complies with Council's 9.5 m height standard.

The following sections indicate the extent of the non-compliances with Council's 9.5 m height standard:







The non-compliances relate to following sections of the proposed development:

## Building 1

The height of this building varies between 11-18.4 m. Due to the downward slope in the land from north-east to south-west and from the rear (north-east) to the Old South Head Road frontage (south-west) and step down toward the centre of the building, the extent of the non-compliance varies along the length and across the width of the building. The non-compliance ranges from approximately the upper 0.25-1.25 levels at the north-eastern end, the upper 1.25-2 levels at the centre and the upper 1-2 levels at the south-western end.

## Building 2

The height of this building varies between 9-12 m. The non-compliance relates to the upper level increasing in extent from the north to the south.

Council's Urban Design Planner has provided the following comments in this regard:

*I am supportive of the proposed height from an urban design perspective.*

The applicant has submitted an objection pursuant to State Environmental Planning Policy No. 1 – Development Standards in relation to the non-compliance with Clause 12.

The following assessment of the SEPP 1 objection applies the questions established in Winten Property Group Limited v North Sydney Council. These questions remain the principal tests to establish whether or not a SEPP 1 Objection is well founded, however, the more recent principles arising from Wehbe v Pittwater Council are applied to inform the assessment.

1. Is the planning control in question a development standard?

The planning control in question is the maximum building height standard set by Clause 12 of Woollahra LEP 1995. As such, any variation of the standard requires a SEPP 1 objection, as has been prepared in this case.

2. What is the underlying purpose of the standard?

The objectives of the minimum site area standard in Clause 12AA are:

- a) *To minimise impact of new development on existing views of Sydney Harbour, ridgelines, public and private open spaces and views of the Sydney City skyline*
- b) *To provide compatibility with the adjoining residential neighbourhood*
- c) *To safeguard visual privacy of interior and exterior living areas of neighbouring dwellings*
- d) *To minimise detrimental impacts on existing sunlight access to interior living rooms and exterior open space areas and minimise overshadowing*
- e) *To maintain the amenity of the public domain by preserving public views of the harbour and surrounding areas and the special qualities of the streetscapes.*

3. Is compliance with the development standard consistent with the aims of the Policy, and in particular, does the development standard tend to hinder the attainment of the objects specified in s.5(a)(i) and (ii) of the EPA Act?

The aim of the Policy is set out at Clause 3 and seeks to “provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979.

In Wehbe v Pittwater Council, Commissioner Preston stated:

*“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.”*

The following assessment considers the objection made by the applicant against the provisions of Clause 12 of Woollahra LEP 1995 in relation to the original scheme and whether or not it is

established that the objectives of the development standard are achieved irrespective of the non-compliance.

The applicant has submitted an objection to the height standard, under the provisions of SEPP 1-Development Standards, which addresses the above objectives and argues that compliance is unreasonable and unnecessary as follows:

*In assessing this proposal and the SEPP1 Objection, it is important to appreciate the use of the site and the structures that have been in existence since the mid 1960's. The special use (school) zoning has facilitated the Vacluse High School, which has a collage of building structures that have co-existed with adjoining and surrounding residential flat buildings. Many of the school buildings that still occupy the site, or those which have been demolished were constructed in close proximity to the western boundary and vary in height from one to three storeys. The configuration of these buildings is in a zigzag format and effectively reduced or eliminated views to the east from the residential flat buildings and dwellings adjoining to the west with a frontage to New South Head Road.*

*Many of these residential flat buildings to the west have garages on their eastern boundary adjoining the site. These garages successfully provided a buffer to the school and its ongoing usage, all be it that they further restricted view potential.*

*The typography of the land has also played a critical role in the design of the school buildings and the design of the proposal. There is a fall from north to south along Old South Head Road of approximately 11 metres and a cross fall from west to east of approximately 4.5 metres. The lowest part of the site is the south-eastern corner at the intersection of Old South Head Road and Laguna Street.*

*Site orientation is the third critical contextural aspect. The orientation of the site is slightly east of a north-south direction. Accordingly, the shortest boundary faces north-east and the two street frontages to Old South Head Road and Laguna Street face south-east and south-west respectively.*

*The adjoining semi-detached dwelling to the north forms part of the site and, although it is to remain in its present form, it provides an important contextural element in the assessment.*

*To the east of the site is a boundary of the Waverley Municipality and the South Head Cemetery. Three and four storey residential flat buildings are located on the Waverley side of Old South Head Road while there are single dwellings on the southern side of Laguna Street.*

### ***Design Philosophy***

*The design philosophy incorporates the principal building with a curved façade to Old South Head Road providing a variety of setbacks and architectural fall highlighted by a series of vertical framed boxes and the main entry foyer.*

*The secondary buildings are the serviced self care dwelling building and the building containing the dining and activities room set back from the western boundary. The western boundary will have extensive landscape screening. With an appreciation of this site context and the design philosophy, the objectives for the height standard can now be assessed.*

***Objective (a): to minimise the impact on new development on existing views from Sydney Harbour, ridgelines, public and private open space and views of the Sydney Skyline.***

*The proposed buildings will not impact on any views of Sydney Harbour. Views enjoyed by the residential flat buildings and dwellings to the west of Sydney Harbour will be retained.*

*The buildings onsite currently or previously eliminated the majority, or all, of the views that were previously available to the east. Also, existing garages at the rear of the residential flat building restrict view opportunities.*

*Building No. 1 has ridges ranging from 87.05 AHD to 93.75 AHD and will not likely be visible from Sydney Harbour. Ridgelines of neighbouring buildings facing New South Head Road range from approximately 83.0 AHD to 93.0 AHD. If the proposal is visible from Sydney Harbour it will be lost in the context of the existing development that have frontage to New South Head Road. From the public domain, in particular the intersection of Old South Head Road and Laguna Street, the building has been designed to present as four storeys with the top storey comprising covered, but unenclosed outdoor recreational space for residents. The top level appears as a more lightweight structure than an additional storey.*

*Importantly, the proposal will provide for a central plaza area that will be available to the public. This open space will provide a facility for residents and the community and the proposed buildings will be clearly visible from that plaza area. In our opinion, the proposal satisfies the objective.*

***Objective (b): to provide compatibility with the adjoining residential neighbourhood.***

*One of the conditions of sale by the NSW State Government was to impose a positive covenant that the site must be used for seniors housing. It is with this fact in mind and history of the site that the compatibility objective should be considered.*

*The main building has been set back substantially from the dwellings to the west providing the main frontage to Old South Head Road. To the west of the main building is a large plaza and landscaped area providing a desirable outlook for any dwellings to the west that have a view over the subject site. The two other buildings are set back from the western boundary with landscaping provided along that boundary. This will also present a pleasant landscaped outlook for those dwellings that have an opportunity to look into the subject site. In our opinion, the proposal satisfies the objective.*

***Objective (c): to safeguard visual privacy of interior and exterior living areas of neighbouring dwellings***

*The proposed principle building (Building 1) is set back at least 33m from the residential flat buildings and dwellings to the west facing New South Head Road. Buildings 2 is set back 6.06m from the western boundary while Building 3 is set back 3.51m from that boundary. These secondary buildings are also located approximately 10.8m-20.8m from the adjoining residential buildings. The setbacks are also supplemented with extensive planting to provide additional screening. Along the rear boundaries of many of the dwellings facing New South Head Road are single storey garage structures. These provide an additional buffer between the existing and proposed buildings. In addition, the topography of the site is such that the ground levels of the proposal are lower than those of development to the west. The privacy between the existing and proposed buildings is considered to be more than satisfactory. In our opinion, this objective is satisfied.*

***Objective (d): to minimise detrimental impacts on existing sunlight access to interior living rooms and exterior open space areas and minimise overshadowing***

*Shadow diagrams have been prepared and form part of this submission. The shadow diagrams relate to 9.00am, 12.00 noon and 3.00pm in summer, the equinox and mid winter. The diagrams compare the shadows from the proposed buildings with the previously approved development. The additional shadow cast by the proposal will largely occur at 9.00am and 3.00pm in mid winter. The majority of the 9.00am shadow will fall on Laguna Street and a small amount will reach the front yards of dwellings on the opposite side of the street. At 3.00pm, the majority of the shadow will fall on Old South Head Road and a portion will reach the six townhouses on the corner of Old South Head Road and Burge Street. The additional shadow that will reach the surrounding dwellings is for a short period of the day on the shortest day of the year in mid winter and is not considered to be significant. It would not prevent these dwellings that enjoy sunlight throughout the rest of the day in mid winter from achieving more than three hours of sunlight access. In our opinion, this objective is satisfied.*

***Objective (e): to maintain the amenity of the public domain by preserving public views of the harbour and surrounding areas and the special qualities of streetscapes***

*The public domain surrounding the subject site includes roads and the Waverley Cemetery on the opposite side of Old South Head Road. The development will present as a three (3) to five (5) storey structure when viewed from the street with the top level at the south-eastern corner appearing as a lightweight open structure. The front of the building is set back from the street and will be extensively landscaped to provide an attractive appearance when viewed from the surrounding areas. The proposed development will not obstruct views of the Harbour or the surrounding area, and in our opinion, will substantially enhance the streetscape. In our opinion, this objective is satisfied.*

***Will non-compliance with the development standard be inconsistent with any planning objectives for the locality? State why.***

*The subject site is zoned Special Uses 5 for school purposes. SEPP (Housing for Seniors) provides that Seniors Housing is permissible on the subject site subject to the design of the project, meeting the design criteria in the SEPP and the consent of the responsible authority. In addition, the sale from the NSW State Government was conditional upon the site being developed for Seniors Housing Development.*

*The desired future character in Council's DCP suggests that buildings should address the street frontage. The design of the proposed development embraces the desired future character by addressing the street frontage. There is a demand for Seniors Housing in the Woollahra LGA and, indeed, the Sydney Metropolitan Area. The proposal will allow existing residents in the Vaucluse and nearby areas to remain in the locality as they age and move to a high standard of accommodation where they can "age in place."*

*Facilities offered by the proposed development will ensure that the needs of future residents are well catered for. Finally, the proposed development readily meets the objectives and numeric provisions contained in the suite of statutory documents that relate to the proposal, including the SEPP (Housing for Seniors). In our opinion, this objective is satisfied.*

***In the circumstances of the proposal, would strict compliance with the development standard:***

***(i) be unnecessary and unreasonable?***

***(ii) tend to hinder the attainment of the objectives under Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979?***

*(i) Yes. In the circumstances of the case, compliance with Council's development standard for height is considered to be unnecessary and unreasonable in the circumstances of this particular case.*

***Unnecessary***

*In our opinion, the development standard is unnecessary as this site has had a history as a non residential use and an educational establishment. It is an unusually large site with falls of up to 11m along the south-eastern boundary. A height limit of 9.5m is normally imposed on traditional sized parcels of land to ensure a relationship and minimise impacts with neighbours. In our opinion, given the distance provided between the existing dwellings to the west and the maintenance of their amenity as an integral part of the proposal, in our opinion the development standard is unnecessary.*

***Unreasonable***

*In our opinion, it would be unreasonable to impose the 9.5m height limit in this instance. A 9.5m height limit is more appropriate for residential buildings and this is reflected in the zoning and corresponding height maps of neighbouring development. The proposal is for a specialised Seniors Housing development on a site that has a number of design constraints. As indicated in Section 4, these include topography and site orientation, which disadvantage the proposed building use in respect of height compliance. There is also an economic imperative to achieve a particular number of Residential Care Facility (RCF) beds and Serviced Self Care Seniors Housing (SSSH) dwellings on the subject site that dictates that these upper level units and residential aged care beds form part of the project. These top level units and RCF beds also ensure that set backs from neighbours are maximised and there is an optimum level of open space.*

*Additionally, the development standard is unreasonable as the proposed exceedance will not result in any significant impacts on the surrounding area and in our opinion, would not achieve a better environmental outcome with a fully compliant proposal. The proposal will permit a use that is needed and seen as desirable in the Woollahra LGA.*

*(ii) Yes. The non-compliance with the height standard is not considered likely to have any significant adverse effect on adjoining or surrounding properties. Strict compliance with the standard would complicate orderly and economic development of the land in accordance with the intentions of the SEPP Housing for Seniors Policy and the objectives of the Act. As indicated, the State Government sold the land on the basis that it will be developed for Seniors Housing purposes. With the increasing number of seniors persons predicted over the next twenty five (25) years, there is a demand for this type of use.*

*In our opinion, the development standard, in its present form would hinder the obtainment of the objectives of Section 5(a)(i) and (ii) of the EP & A Act.*

***Explain how the proposal, notwithstanding the non-compliance with the development standard, will achieve the objective of the development standard.***

*The subject site has a history of being an educational facility and is currently restricted to be a seniors housing facility. This type of facility has a critical building mass which is not the same as a residential development. Indeed, to accommodate the support areas required for the proposed seniors housing facility, there is a need for a considerable amount of floor area for support and service facilities.*

*Notwithstanding this, the design of the proposal has endeavoured to satisfy all of the above objectives and minimise impacts on the surrounding area. From an architectural and urban design perspective, the proposal will substantially improve the appearance of the site when viewed from the public domain. In addition, the proposal will provide for a facility that is needed in the Woollahra LGA and the metropolitan area generally.*

The following assessment of the height non-compliance having regard to the above-mentioned objectives underlying the height development standard, is provided:

***Objective a: To minimise the impact of new development on existing views of the Sydney Harbour, ridgelines, public and private open spaces and views of the Sydney City skyline.***

***Objective e: To maintain the amenity of the public domain by preserving public views of the harbour and surrounding areas and the special qualities of the streetscapes.***

The portion of the buildings in breach of the height control will not significantly affect views from private properties or the public domain.

Whilst the non-compliant upper levels rise above the New South Head Rd properties located to the north-west which are on top of the Vacluse ridgeline, the associated visual impact when viewed from Sydney Harbour, the northern shore of the Harbour and other public vantage points to the west and south-west will not be significant due to the substantial distances involved and the minor extent of the difference in comparative heights.

***Objective b: To provide compatibility with the adjoining residential neighbourhood***

As discussed previously under the sections ***12 SEPP 65-Design Quality of Residential Flat Development Principle 1 Context and 13 SEPP (Housing for Seniors or People with a Disability) 2004 Clause 33 Neighbourhood amenity and streetscape***, the proposal, including the portions of the buildings in breach of the height control, is considered to be satisfactory in its context in terms of height, bulk and scale as presented to adjoining properties and the two streetscapes.

***Objective c: To safeguard visual privacy of interior and exterior living areas of neighbouring dwellings.***

Subject to **Conditions C.1a)** requiring privacy protection measures to the upper 2 levels of Building 2, as discussed previously under the section ***13 SEPP (Housing for Seniors or People with a Disability) 2004 Clause 34 Visual and acoustic privacy***, the portions of the buildings in breach of the height control will not significantly affect the privacy of surrounding properties.

***Objective d: To minimise detrimental impacts on existing sunlight access to interior living rooms and exterior open space areas and minimise overshadowing.***

The portion of the building in breach of the height control will not significantly affect solar access to adjoining properties as discussed previously under the section ***13 SEPP (Housing for Seniors or People with a Disability) 2004 Clause 33 Neighbourhood amenity and streetscape and Clause 35 Solar access and design for climate.***

The Land and Environment Court has established that it is insufficient merely to rely on absence of environmental harm to sustain an objection under SEPP 1. This position was confirmed in *Wehbe v Pittwater Council*. The following assessment considers whether the strict application of the



development standard would hinder the attainment of the objects of the Environmental Planning and Assessment Act 1979.

Section 5(a) of the Act prescribes the objects relevantly as to encourage:

- i) *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*
- ii) *The promotion and co-ordination of the orderly and economic use and development of land*
- iii) *The protection, provision and co-ordination of communication and utility services*
- iv) *The provision of land for public purposes*
- v) *The provision of co-ordination of community services*
- vi) *The protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities*
- vii) *Ecologically sustainable development*
- viii) *The provision and maintenance of affordable housing.*

It is considered that, in the circumstances of the case, a strict application of the development standard would hinder the attainment of object 5(a) ii) of the Act, as the proposal, as conditioned, will not have any significant adverse environmental impact, including impact upon the amenity of surrounding properties. Requiring compliance with Council's 9.5 height standard would hinder the economic and orderly development of the subject site in terms of the provision of locally needed high-quality housing for the elderly and disabled.

4. Is compliance with the standard unreasonable and unnecessary in the circumstances of the case?

Full compliance with Council's 9.5 m height development standard is considered to be unreasonable and unnecessary in the circumstances of this particular case due to the absence of any significant adverse environmental impact (including the amenity of adjoining residential properties) and the necessity of facilitating high-quality housing for the elderly and disabled within the Woollahra municipality.

5. Is the objection well founded?

The applicant's SEPP 1 objection to Council's height development standard is considered to be well founded on the basis that the non-compliance will not result in any significant adverse environmental impact (including the amenity of adjoining residential properties subject to **Condition C.1a**) whilst contributing to the provision of high-quality housing for the elderly and disabled thereby achieving consistency with objectives underlying the development standard and the objects of the Act. As such, it is considered that granting development consent would be consistent with the aims and objectives of SEPP 1.

### 17.3 Clause 18 Excavation

The provisions of Clause 18 require Council, when considering a development application involving excavation, to have regard to how that excavation may temporarily or permanently affect:

- (a) *the amenity of the neighbourhood by way of noise, vibration, dust or other similar circumstances related to the excavation process*

- (b) *public safety*
- (c) *vehicle and pedestrian movements*
- (d) *the heritage significance of any heritage item that may be affected by the proposed excavation and its setting*
- (e) *natural landforms and vegetation and*
- (f) *natural water run-off patterns*

The proposal involves major excavation to depths of approximately 1-9.5 m over an area of approximately 10,200 m<sup>2</sup>, a volume of approximately 54,700 m<sup>3</sup>.

This extent of excavation proposed is less than that associated with the approved development which involves an area of 10,700 m<sup>2</sup> and a volume of 55,800 m<sup>3</sup>.

The 54,700 m<sup>3</sup> of excavated material would involve approximately 6875 truck movements assuming 8 m<sup>3</sup> per truck movement on average (as advised by Council's engineers). In terms of ESD principles, the extent of material proposed to be removed from the site is considered to be acceptable.

The excavation is setback more than 1.5 m from all boundaries with the exception of a 12 m long section of the Old South Head Road frontage where it extends to within 1 m. However, Council's Development Engineer raises no objection to this non-compliance on geotechnical/hydrogeological grounds and Council's Tree and Landscape Officer raises no objection on tree protection and deep soil landscaping provision adjacent to the street frontage grounds.

Council's Development Engineer has provided the following comments in relation to the proposed excavation:

*A Geotechnical Report by Douglas Partners, dated August 2012, Revision 1, Project 45318.02 has been submitted in support of the application. The proposal involves excavation for the basement and lower levels up to 10.0m deep and locally deeper for lift pit overruns and drainage pits.*

*The report identified that the property was underlain with a layer of Topsoil / fill overlying sand (between 1.0 and 4.5m deep) overlying clay & sandy clay (between 2.1 and 6.5m deep) overlying sandstone bedrock at varying depths across the site.*

*Inferred bedrock on the southern half of the western boundary ranges between 0.6m and 2.0m. Groundwater appeared not to be an issue.*

*The report made comments and recommendations on the following:*

- *Geological Model*
- *Excavation Conditions*
- *Off-Site Disposal of Excavated Material*
- *Excavation Support*
- *Anchoring*
- *Vibrations*
- *Foundations*
- *Earthquake Design*
- *Ground Slabs*
- *Groundwater*

*Conditions covering these matters as well as others identified by Council are recommended.*

Having regard to the above-mentioned heads of consideration, the following comments are made in relation to the impact of the proposed excavation upon the local environment:

(a) *the amenity of the neighbourhood by way of noise, vibration, dust or other similar circumstances related to the excavation process*

Subject to **Conditions C.7, C.10, D.2, D.6, D.7, E.5-E.10, E.15 & E.20** requiring adequate sediment/soil management, dust control, limiting the times and duration of machine excavation, requiring the preparation of dilapidation reports, compliance with recommendations of the geotechnical/ hydrogeological report submitted with the development application and the implementation of hydrogeological / geotechnical and vibration monitoring programs requiring the adequate supervision/ monitoring of the excavation process by a qualified and practicing geotechnical engineer, the amenity of the adjoining residential properties will be maintained.

(b) *public safety*

(c) *vehicle and pedestrian movements*

Issues relating to public safety and pedestrian movements during the excavation phase are inter-related. Notwithstanding the very substantial volume of excavation, Council's Traffic and Development Engineers are satisfied that the local road network can facilitate the necessary truck movements. Subject to **Conditions D.4, D.5, E.3, E.4 & E.7** requiring adequate construction management including a construction management plan, a works zone, a safe pedestrian route and the structural support of neighbouring buildings and public places during excavation.

(d) *the heritage significance of any heritage item that may be affected by the proposed excavation and its setting*

The proposed excavation is outside the zone of influence of all heritage items in the vicinity of the subject site.

(e) *natural landforms and vegetation*

Whilst the proposal does involve substantial excavation, it does not affect any significant natural landform features.

Council's Tree and Landscape Officer considers the proposal to be satisfactory in terms of excavation in the vicinity of significant trees subject to **Conditions B.1-B.3, C.15, & E.2**.

(f) *natural water run-off patterns*

Council's Development Engineer has recommended **Conditions C.6, C.13 & E.6** which are designed to mitigate adverse environmental impacts in relation to subsurface and surface water run-off.

Council's standard condition limiting the outer edge of the excavation to that documented on the plans is recommended (see **Condition A.7**).

Subject to the above-mentioned conditions, the excavation associated with the proposal is considered to be satisfactory with regard to the provision of Clause 18 of WLEP 1995.

## 17.4 Clause 25 Water, wastewater and stormwater

Clause 25 of Woollahra LEP 1995 requires Council to take into consideration the provision of adequate stormwater drainage and the provision of adequate water and sewerage services.

A feasibility letter from Sydney Water has been submitted with the application stating that there is satisfactory connection to a reticulated water system and there are adequate facilities for the removal and disposal of sewerage (refer to **Annexure 12**). **Conditions C.20 & F.3** require a Section 73 Certificate to be obtained from Sydney Water and compliance achieved with the terms of the certificate.

The proposal is considered to be satisfactory in terms of the provision of adequate stormwater drainage, subject to **Conditions C.6 & C.13**.

## 17.5 Clause 25D Acid Sulfate Soils

Council's Senior Environmental Health Officer has provided the following comments in this regard:

The Sydney Heads 1:25,000 Acid Sulfate Soil Risk Map-Edition One identifies the area as having no known occurrences of ASS materials. Council's Acid Sulfate Soil Planning Map does not identify the site as having potential acid sulfate soils. Based on the above information there is no need for the preparation of an Acid Sulfate Soil Management Plan to be prepared for the development site.

The subject site is within the Class 5 Acid Sulphate Soil area identified in the Planning NSW Acid Sulphate Soil Risk Map. However, the subject works are not likely to lower the water table below 1 m AHD on any land within 500 m with a 1, 2, 3 or 4 land classification and therefore, there is no issue of acid sulphate affectation in this instance.

## 18. WRDCP 2003

Consideration of the provisions of Woollahra RDCP 2003 is limited to those matters not addressed above under the the sections **12 SEPP 65-Design Quality of Residential Flat Development** and **13 SEPP (Housing for Seniors or People with a Disability) 2004** on the basis that Clauses 6 & 5 respectively of the SEPPs state *in the event of an inconsistency between this Policy and another environmental planning instrument, whether made before or after this Policy, this Policy prevails to the extent of the inconsistency.*

### 18.1 Section 4.14-Vacluse East Precinct: Desired Future Precinct Character

The local context is a residential neighbourhood characterised by a diversity of development types ranging from single storey detached houses to 3 storey residential flat buildings of varying age and architectural styles. Whilst the predominant architectural style is face brick and tiled roofs, there are numerous modern rendered masonry developments with flat roof forms indicative of a precinct undergoing transition from old to modern architecture. Accordingly, regard should be given to Council's desired future character provisions for the precinct. Woollahra RDCP 2003 contains desired future character objectives and controls for the Vacluse East Precinct in which the subject site is located.

The desired future character objectives are as follows:

- O 4.14.1 To retain the scenic qualities provided by the dramatic topography, natural vegetation and low scale built elements of the precinct.*
- O 4.14.2 To reinforce the precinct's landscape setting by minimising alterations to the landform and preserving the existing tree canopy.*
- O 4.14.3 To maintain mature street trees, grassed verges and garden plantings.*
- O 4.14.4 To protect important views from the public spaces of the precinct to the harbour, the city skyline and to the surrounding districts.*
- O 4.14.5 To maintain the evolution of low rise residential building styles through the introduction of good contemporary buildings.*

The performance of Building 2 against the desired future character objectives and controls for the Vaucluse East Precinct has been addressed previously under section **12 SEPP 65-Design Quality of Residential Flat Development Principle 1 Context**.

The remainder of the proposal complies with the applicable desired future character performance criteria (including side boundary setbacks and deep soil landscaped areas to the front setbacks) with the exception of the proposed 5 storeys aboveground which exceed the maximum of 2 storeys prescribed under C 4.14.7.3. Notwithstanding this non-compliance, the remainder of the proposal is considered to be satisfactory with regard to the above-mentioned objectives for the following reasons:

- The height, bulk and scale of the development is considered to be satisfactory in terms of complementing the built form/character of the 1-3 storey development in the locality due to the reasons advanced above under section **13 SEPP (Housing for Seniors or People with a Disability) 2004-Clause 33 Neighbourhood amenity and streetscape**.
- The site is considered to have an independent context due to its large size and corner location.
- Notwithstanding the proposed removal of a number of existing trees from the site, Council's Tree and Landscape Officer raises no objection to this being satisfied that existing significant trees will be retained and adequate replacement planting will occur.
- Landscaping works are proposed to the sections of Council's footpath adjacent to the Old South Head Rd and Laguna St frontages involving new paving and new/upgraded landscaped verges and the provision of appropriate additional street trees subject to the substitution of the proposed 16 Tuckeroos with 11 Coastal Banksia and 5 Water Gums (see **Condition C.14**) which will improve upon the existing landscaping to the perimeter of the site including adjacent to the 2 street frontages.
- It will not obstruct significant views from public spaces within the precinct of the ocean, harbour, the city skyline and surrounding districts.
- The wave-shaped Old South Head Road alignment, splayed Laguna Street alignment and the proposed external materials consisting of blue/green glazing, neutral glazing, charcoal coloured metal screens and timber-like window shadow boxes are considered to be consistent with the style of modern development in the locality.

- It is considered that the proposal will result in a substantial improvement in the visual amenity of the locality relative to the existing unsightly school development due to the high quality architectural design, external finishes and landscaping.

Council's Urban Design Planner has provided the following comments in this regard:

*The building's use is residential, but the site size, the plan layout and the resulting built form of the high care facility means that the controls for residential properties on residential lots are not relevant.*

Due to the above, the remainder of the proposal is considered to be satisfactory in terms of compatibility with the context of the surrounding built and natural environment. Whilst it is acknowledged that Building 1 will appear large relative to surrounding development, the demand for seniors housing in an area with an ageing population is considered to be of such public interest as to justify the support of the proposal which exceeds the typical height and density controls which apply to residential flat buildings and dwelling-houses in the locality.

## **18.2 Building size and location performance criteria**

The objectives of Part 5.2 of Woollahra RDCP 2003 involve:

- 5.2.1 The preservation of established tree and vegetation networks and the promotion of new networks by ensuring sufficient areas for deep soil planting and sufficient setbacks between the rear of buildings;*
- 5.2.2 To ensure the size and location of buildings allow for the sharing of views and preserve privacy and sunlight access for neighbouring residents;*
- 5.2.3 To ensure the form and scale of development is not excessive and maintains the continuity of building forms and front setbacks in the street; and*
- 5.2.4 To limit site excavation and minimise cut and fill to ensure that building form relates to the topography and to protect the amenity of adjoining properties both during and after construction.*

The extent and significance of areas of non-compliance with relevant performance criteria are discussed as follows:

### ***Front and rear boundary setbacks***

Front and rear boundary setback non-compliances have been addressed previously under section **13 SEPP (Housing for Seniors or People with a Disability) 2004-Clause 33 Neighbourhood amenity and streetscape**.

### ***Excavation setbacks***

Performance criterion 5.2.16 requires excavation, piling and all sub-surface walls to be sited a minimum distance of 1.5 m from a boundary. The excavation is setback more than 1.5 m from all boundaries with the exception of a 12 m long section of the Old South Head Road frontage where it extends to within 1 m. However, Council's Development Engineer raises no objection to this non-compliance on geotechnical/hydrogeological grounds and Council's Tree and Landscape Officer raises no objection on tree protection and deep soil landscaping provision adjacent to the street frontage grounds. Accordingly, no objection is raised in relation to this area is non-compliance.

### ***Solar access***

Performance Criterion C5.2.13 requires sunlight to be provided to at least 50% (or 35 m<sup>2</sup> with minimum dimension 2.5 m, whichever is smaller) of the main ground level private open space of adjacent properties for a minimum of two hours between 9 am and 3 pm on June 21. Where existing overshadowing is greater than this, sunlight is not to be further reduced. The proposal complies with this requirement.

Performance Criterion 5.2.14 requires solar access to be maintained to north-facing windows of adjoining properties for a minimum of 3 hours between 9am and 3pm on June 21. The proposal complies with this requirement.

### **18.3 Views performance criteria**

The provisions of Part 5.5 of WRDCP 2003 require the protection and enhancement of public views and encourage view sharing as a means of ensuring equitable access to views from private dwellings.

The owner of 13 Serpentine Parade has objected to the proposal on the grounds of loss of views. This property is located several hundred metres away and downhill from the subject site and it is considered that it is not possible for private harbour and city views from this property to be affected by the proposed development.

The owner of 3/115 New South Head Road has objected to the proposal on the grounds of loss of views.

In assessing the reasonableness or otherwise of the degree of view loss, this report has had regard to the case law established by *Tenacity Consulting v Warringah* (2004) NSWLEC 140 (paragraphs 23-33) which has established a four step assessment of view sharing. The steps are as follows:

#### The assessment of the views affected

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

Views potentially affected by the proposal are a glimpse of the ocean through existing vegetation over the centre of the subject site.

#### Consideration from what part of the property the views are obtained

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

The views are obtained from an internal living/dining area via the rear elevation of this first floor level (uppermost level) unit.

### The extent of the impact

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

Building 3 will totally obscure the ocean glimpse shown in Photo 1 below. However, an iconic view of the Sydney Harbour Bridge, the North Sydney skyline, glimpses of Sydney Harbour and harbour foreshore views to the north-west from the sunroom of this unit will be unaffected (see Photos 2 and 3). The extent of the loss is considered to be minor.

*Photo 1: Affected ocean glimpse to the south-east from rear living area-standing position*



*Photo 2: Unaffected views to the west from sunroom-front elevation-standing position*





*Photo 3: Unaffected views to the north-west from sunroom-front elevation-standing position*



The reasonableness of the proposal that is causing the impact

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

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

The view affectation is caused by Building 3 which complies with Council's 9.5 m height standard. Further, as an iconic view of the Sydney Harbour Bridge, the North Sydney skyline, glimpses of Sydney Harbour and harbour foreshore views to the north-west from the sunroom of this unit will be unaffected, the minor extent of view loss caused by the proposed Building 3 is considered to be reasonable and hence no redesign is considered necessary.

Whilst similar ocean glimpses from other New South Head Road properties may be affected by the proposal, the views would be obscured by the height compliant aspects of the development and the majority of the properties have primary views and aspect to the west and north. No significant impact upon the views from any private property or the public domain as a result of the proposed development is envisaged.

#### **18.4 Stormwater management performance criteria**

The provisions of Part 5.7 of Council's RDCP 2003 require adequate stormwater management. Subject to the imposition of **Conditions C.6 & C.13** the proposal is satisfactory with regard to the provisions of Part 5.7 of Council's RDCP 2003.

#### **18.5 Car Parking and Driveways performance criteria**

The objectives of Part 5.9 of Woollahra RDCP 2003 state:

- O 5.9.1 To limit the amount of site excavation for the purpose of car parking.*
- O 5.9.2 To provide convenient and safe car parking and access while encouraging alternative modes of transport, particularly walking and cycling.*
- O 5.9.3 To ensure that on-site car parking and driveways do not dominate or detract from the appearance of the development and the local streetscape.*
- O 5.9.4 To limit the adverse temperature and stormwater run-off impacts of impervious surfaces.*

The proposal involves the following non-compliances:

- C 5.9.1 The area of site excavated for the purposes of underground car parking is limited to the building footprint of the development and the site excavation requirements contained in Section 5.2 - Building Size and Location.*

The proposed excavated section at Lower Ground Floor level containing car parking extends beyond the western and northern sections of the building footprints above and as stated above under the section **18.2 Building size and location performance criteria-Excavation setbacks**, the excavation is setback more than 1.5 m from all boundaries as required by performance criterion 5.2.16 with the exception of a 12 m long section of the Old South Head Road frontage where it extends to within 1m of the front boundary.

However, Council's Development Engineer raises no objection to this non-compliance on geotechnical/hydrogeological grounds and Council's Tree and Landscape Officer raises no objection on tree protection and deep soil landscaping provision adjacent to the street frontage grounds. Further, the proposal complies with deep soil landscaped area requirements. Accordingly, no objection is raised in relation to this area of non-compliance.

**C 5.9.8**     *The widths of access driveways comply with the following:*

*Number of onsite parking spaces*  
*25 or more*

*Driveway width*  
*6.0m – 9.0m\**

*\*(Note: Access driveway widths should be kept to a minimum, and are subject to compliance of all other relevant policy controls.)*

The proposed driveway widths of 13 m to Laguna St and 6-6.6 m to Old South Head Road have been objected to by Council's Development Engineer who has recommended that they be reduced to 3.5-6 m (see **Condition C.6**) which will achieve compliance.

## **19. Parking DCP 2011**

The proposal is considered to be satisfactory with the relevant provisions of this DCP.

## **20. Woollahra Access DCP**

Council's Urban Design Planner has provided the following comments in this regard:

*The internal performance of this proposal is good. The planning of the proposal linking it to the local centre helps the proposal connect to the wider community.*

The buildings and facilities are required to be fully accessible. Disabled parking is required to be provided in accordance with AS2890.1. The proposal provides 4 disabled car spaces in compliance with the disabled carparking requirement. An accessibility report has been submitted with the subject application demonstrating that the buildings are fully accessible to persons with disabilities. **Conditions A.5 & C.3** require the adoption of the recommendations contained in the report. Subject to this requirement, the proposal is considered to be satisfactory with regard to the provisions of the Access DCP.

## **21. Section 94A Contributions**

The Woollahra Section 94A Contributions Plan 2005 is applicable. In accordance with Schedule 1, a 1% levy (of the total cost of works) applies. With a cost of works of \$98,511,823 a payment of \$985,511.82 is required by **Condition C.5** which will be used for a variety of works as outlined in Schedule 2 of the Section 94A Contributions Plan.

## **22. WASTE NOT DEVELOPMENT CONTROL PLAN 2010**

The Waste Not DCP is applicable to all development and seeks to establish waste minimisation and sustainable waste management during demolition and construction phases and throughout the on-going use of the building. **Conditions C.18, E.22, E.23 & I.5** adequately address the provisions of the DCP.

Council's Urban Design Planner has provided the following comments in this regard:

*Waste management is adequately housed on the site.*

## **23. APPLICABLE REGULATIONS**

Clause 92 of the EPA Regulation 2000 requires us to consider Australian Standard AS 2601-1991: The demolition of structures. This is addressed via **Condition E.12**.

Clause 94 of the EPA Regulation 2000 requires that Council take into consideration whether the fire protection of the buildings will be adequate. Council's Fire Safety Officer has advised that the proposal will be required to demonstrate compliance with the fire safety provisions of the Building Code of Australia at construction certificate stage and has recommended conditions of consent requiring fire safety certificates and annual fire safety statements (see **Conditions F.2 & I.6**).

## **24. THE SUITABILITY OF THE SITE**

The site is considered suitable for the proposed development as conditioned.

## **25. THE PUBLIC INTEREST**

In determining whether or not the proposal is in the public interest, both the wider public interest (in this instance, the provision of housing for the elderly and disabled) and the sectionalised public interest (protecting residential amenity of surrounding residential properties) must be taken into consideration in a balanced manner. In the event that the wider public interest outweighs the sectionalised public interest, the proposal can be determined to be in the public interest.

With regard to the wider public interest, the proposal will improve the provision of housing for the elderly and disabled in an area where the population is ageing thereby preventing the need for local residents to move away from the local area.

In terms of the sectionalised public interest, the proposal will not have any significant adverse impacts upon residential amenity, subject to conditions. Accordingly, it is considered that the proposal is in the public interest.

## **26. CONCLUSION**

Whilst the proposal is substantial in size, visual impacts are adequately mitigated by the innovative, high-quality architectural and landscape design attributes discussed previously. The development is well landscaped and maintains existing significant trees. The proposal, as conditioned, will not have any significant adverse impact upon the amenity of surrounding residential properties or the public domain. The proposed development is environmentally sustainable and will provide serviced self-care housing units and a residential care facility with generally excellent internal and external amenity and access to a wide range of services, shops and facilities, to the elderly and the disabled.

The proposal, as conditioned, is considered to be acceptable against the relevant considerations under s79C.

## **27. 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.

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

THAT the Joint Regional Planning Panel, as the consent authority, is of the opinion that the objection under *State Environmental Planning Policy No. 1 – Development Standards* to Council's 9.5 m height development standard under Clause 12 of Woollahra LEP 1995 is well founded. The Joint Regional Planning Panel is also of the opinion that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of this case as the non-complying sections of the development, as conditioned, will not have any significant adverse impact upon the amenity of the locality including adjoining properties and will achieve the objectives of the height standard. Requiring compliance with Council's 9.5 height standard would hinder the economic and orderly development of the subject site in terms of the provision of locally needed high-quality housing for the elderly and disabled.

**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 DA 384/2012/1 is consistent with the aims of the Policy, grant development consent to DA 384/2012/1 for the demolition of the existing former Vacluse High School buildings and the construction of a Seniors Housing Development comprising a 227 bed residential care facility, 3 x 1 & 11 x 2 bedroom self-contained dwellings (serviced self-care housing), associated services, 99 basement parking spaces, landscaping and siteworks on land at 2 Laguna Street Vacluse, 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.

**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, piering, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or

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

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

### A.3 Approved Plans and supporting documents

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

Reference	Description	Author/Drawn	Date(s)
A 01.01-A 01.08, DA 02.01, DA 02.02, A 03.01- A 03.03, A 05.01- A 05.04 & A 06.01 as amended by the works indicated on LC01 DA1	Architectural Plans	Marchese Partners Taylor Brammer	Sept 2012 31/1/2013
Dwgs No. H-001, H-201 & H-202, H-100 and H-200, Revision D	Stormwater disposal report and concept plans	JHA Consulting Engineers	11/09/2012
Revision 1, Project 45318.02	Geotechnical Report	Douglas Partners	August 2012
Supplementary Traffic and Parking Report	Supplementary Traffic and Parking Report	GSA Planning	December 2012
Access Report	Access Report	Accessibility Solutions (NSW) P/L	31 August 2012
Tree Wise Men	Arboricultural Impact Assessment Report	Peter Castor	September 2012
ESD Report	Energy & Water Sustainability Initiatives	Cundall	September 2012
Waste Management Plan	Waste Management Plan	Thinc Projects	September 2012
DA Acoustic Report 20120316.1/2305A/R5/JZ and supplement 20120316.1/0412A/R2TT	Acoustic Report and supplement	Acoustic Logic	21/08/12 08/10/12

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

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

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

### A.5 Conditions of consultation – RMS

- i) The proposed driveways on Old South Head Road shall be designed and constructed in accordance with AS2890.1 -2002.



- ii) The swept path of the longest vehicle entering and exiting the subject site via Old South Head Road as well as manoeuvrability through the site shall be in accordance with Austroads.
- ii) The design should meet RMS's requirements, and endorsed by a suitably qualified and chartered Engineer (i.e. who is registered with the Institute of Engineers, Australia). The design requirements shall be in accordance with the RMS's Road Design Guide and other Australian Codes of Practice. The certified copies of the civil / traffic signal design plans shall be submitted to the RMS for consideration and approval prior to the release of construction certificate by Council and commencement of road works. The RMS fees for administration, plan checking, civil and signal works inspections and project management shall be paid by the developer prior to the commencement of works.
- iii) The developer may be required to enter into a Works Authorisation Deed (WAD) for the abovementioned works. If required, please note that the Works Authorisation Deed (WAD) will need to be executed prior to the RMS's assessment of the detailed civil/traffic signal design plans.
- iv) All work associated with the proposed development shall be at no cost to RMS or Council.
- v) The development shall be designed such that road traffic noise from Old South Head Road is mitigated by durable materials and complies with the requirements of Clause 102 -(Impact of road noise or vibration on non-road development) of State Environmental Planning Policy (Infrastructure) 2007.
- vi) The post development storm water discharge from the subject site into the RMS drainage system shall not exceed the pre development discharge. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to the RMS for approval, prior to the commencement of any works. Details should be forwarded to the Sydney Asset Management PO Box 973 Parramatta CBD NSW 2124. A plan checking fee may be payable and a performance bond may be required before the RMS's approval is issued. With regard to the Civil Works requirement please contact the RMS's Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2766.
- vii) All vehicles are to enter and leave the site in a forward direction.
- viii) All works/regulatory signposting associated with the proposed development are to be at no cost to RMS.

## **A.6 Occupation of the development**

In accordance with the provisions of ***Clause 18 Restrictions on occupation*** under SEPP (Seniors Living) 2004, the occupation of the development is limited to the following:

- i) Seniors or people who have a disability,
- ii) People who live within the same household with seniors or people who have a disability,
- iii) Staff employed to assist in the administration of and provision of services to the residential care facility and the serviced self-care housing.

## A.7 Excavation

In order to clearly define the setback of the excavation from the boundary approved by this consent, the outer edge of excavation from a boundary (inclusive of the width of any subsurface wall shown on the approved plans) must not be exceeded for piling, retention or for any other construction or engineering reason (including BCA standards).

## A.8 Tree Preservation & Approved Landscaping Works

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

a) The following trees shall be retained

- Trees on Private Land

Council Ref No	Species	Location	Dimension (metres)
23	<i>Casuarina glauca</i> Swamp She-oak	North western side boundary	12 x 3
24	<i>Casuarina glauca</i> Swamp She-oak	North western side boundary	12 x 3
26	<i>Eucalyptus botryoides</i> Southern Mahogany	North western side boundary	11 x 4
28	<i>Eucalyptus botryoides</i> Southern Mahogany	North western side boundary	6 x 4
49	<i>Araucaria heterophylla</i> Norfolk Island Pine	South western frontage	18 x 8

b) The following trees may be removed:

Council Ref No	Species	Location	Dimension (metres)
Arboricultural Impact Assessment Report, written by Tree Wise Men – Peter Castor, dated September 2012	In accordance with the Arboricultural Impact Assessment Report, written by Tree Wise Men – Peter Castor, dated September 2012	Arboricultural Impact Assessment Report, written by Tree Wise Men – Peter Castor, dated September 2012	Arboricultural Impact Assessment Report, written by Tree Wise Men – Peter Castor, dated September 2012

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

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

### B.1 Establishment of Tree Protection Zones (TPZ)

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

- a) Tree Protection Zone areas are to be installed in accordance with the Tree Protection Requirements, Tree Protection Plan and Tree Retention recommendations specified in the submitted Arboricultural Impact Assessment Report, written by Tree Wise Men – Peter Castor, dated September 2012
- b) The project arborist shall provide written certification of compliance with the above condition.

## **B.2 Permissible work within Tree Protection Zones**

The works specified in the submitted Arboricultural Impact Assessment Report, written by Tree Wise Men – Peter Castor, dated September 2012 are permissible within the Tree Protection Zone. The project arborist shall provide written certification of compliance with the above condition.

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

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

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

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

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

<b>Stage of arboricultural inspection</b>	<b>Compliance documentation including photos shall be included</b>
Installation of tree protection fencing	Compliance with tree protection measures
Excavation, machine trenching, or compacted fill placed within the TPZ of all retained trees	Condition of exposed roots and aerial parts of tree
Installation of approved landscaping	Condition of roots and soil
Inspection of irrigation set out	Appropriate distribution of irrigation water
Laying of permeable paving within TPZ of retained trees	Condition of roots and soil ensure area is not skimmed
Prior to the issue of a Final Occupation Certificate	Supervise the dismantling of tree protection measures

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

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

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

## C.1 Modification of details of the development (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) In order to adequately maintain the visual privacy of adjoining properties to the north-west (111 & 113 New South Head Rd), the windows to the dining/living rooms of Units 1.01 & 1.02 and the kitchens to 1.02 & 2.02 shall be treated/designed/screened so as to prevent lines of sight into the private open space areas and habitable room windows of the adjoining properties.

**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.

## C.2 Water and energy efficiency measures

In order to reduce the demand for water and energy, the commitments contained in the ESD report referred to **Condition A.3** are to be indicated on the relevant landscape, architectural and stormwater drainage plans and specifications submitted with the construction certificate application including the following measures identified by Council's Team Leader Environment and Sustainability:

- Insulation of walls floors and ceilings
- Low-e glazing on windows
- Skylights to provide daylight
- Overhangs and external shading devices
- Natural ventilation
- CO monitoring in the car parks
- Variable Speed Drives to reduce energy use for fans
- BMS energy efficiency controls
- Centralised VRV system for heating and cooling
- Centralised gas hot water system
- Efficient light fittings including LEDs and fluorescent
- Day light dimmer timers and motion sensors in car parks, common areas, and plant rooms
- High energy efficiency appliances
- High water efficient appliances
- The use of native drought resistant plants to reduce water use
- Water Sensitive Urban Design Measures
- Greywater recycling in laundries
- 150,000 litre rainwater tank.

## C.3 Accessibility requirements

In order to ensure adequate accessibility within the buildings and within the communal open space areas, the measures identified in the Access report referred to in **Condition A.3** and compliance with all relevant standards concerning accessibility and useability for self-contained dwellings specified under Schedule 3 of SEPP (Housing for Seniors or People with a Disability) 2004 are to be indicated on the relevant landscape and architectural plans and specifications submitted with the construction certificate application.

#### C.4 Security requirements

In order to ensure adequate security within the buildings, the following requirements are to be indicated on the relevant landscape and architectural plans and specifications submitted with the construction certificate application:

- Lighting along the pathways through the communal open space areas and to the building entries.
- Intercom systems and security doors provided to the building and carpark entries.
- A peep hole is to be provided to the front door to each of the self-contained dwellings.

#### C.5 Payment of Long Service Levy, Security, Contributions and Fees

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

Description	Amount	Indexed	Council Fee Code
<b>LONG SERVICE LEVY</b>			
under Building and Construction Industry Long Service Payments Act 1986			
<b>Long Service Levy</b> <a href="http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm">http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm</a>	Contact LSL Corporation or use online calculator	No	
<b>SECURITY</b>			
under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit	\$1,965,788	No	T115
Infrastructure Works Bond	\$105,000	No	T600
<b>DEVELOPMENT LEVY</b>			
under Woollahra Section 94A Development Contributions Plan 2011 This plan may be inspected at Woollahra Council or downloaded at <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a> .			
<b>Development Levy (Section 94A)</b>	\$985,511.82 + Index Amount	Yes, quarterly	T96
<b>INSPECTION FEES</b>			
under Section 608 of the Local Government Act 1993			
Public Road and Footpath Infrastructure Inspection Fee (\$138 Fee)	\$435	No	T45
Security Administration Fee	\$185	No	T16
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>	\$3,056,919.80 plus any relevant indexed amounts and long service levy		

#### Building and Construction Industry Long Service Payment

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

### **How must the payments be made?**

Payments must be made by:

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

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

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

### **How will the section 94A levy be indexed?**

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

### **Do you need HELP indexing the levy?**

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

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

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

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

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

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

Any deferred or periodic payment of the section 94A levy will be adjusted in accordance with clause 3.13 of the plan. The applicant will be required to pay any charges associated with establishing or operating the bank

guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

## **C.6 Road and Public Domain Works – Council approval required**

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.

Detailed plans and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage) within existing roads, must be submitted to **Council's Development Engineer** and approved by *Council* under the *Roads Act 1993*, before the issue of any *Construction Certificate*. To accommodate this requirement, the following infrastructure works must be carried out on Council property at the Applicants expense:

### Road & Footpath

- The removal of all driveways and footpath for the full length of the development.
- The construction of a full width vehicular crossing for the southern entry having a width of 6.0m including new layback and gutter in accordance with Council's standard drawing RF2C.
- The construction of a full width vehicular crossing for the northern entry having a width of 4.5m including new layback and gutter in accordance with Council's standard drawing RF2C.
- The construction of a full width vehicular crossing on Laguna Street having a width of 6.0m including new layback and gutter in accordance with Council's standard drawing RF2C.
- The construction of new concrete footpath for the full length of the property in accordance with Council's standard drawing RF3.
- Replacement of all dilapidated concrete kerb ramps as identified in the "Accessibility Report" dated 31/08/2012 by Mark Relf. The replaced assets are to be in accordance with Council's standard drawing RF3.
- The reconstruction of the footpath (and kerb ramp if required) at the corner of New South Head Road and Laguna Street as per the advice in the Access Report by Accessibility Solutions (NSW) P/L dated 31 August 2012 and the stipulated requirements of the site compatibility certificate for the proposed development issued by the Department of Planning and Infrastructure issued on 9 September 2012.
- to comply with AS1428 Design for Access and Mobility, Part 1, Version 2009. Details of the reconstruction are to be submitted with the S138 Roads Act Application.
- The construction of a bus shelter on Old South Head corner of Laguna Street (location of the existing bus stop).
- The construction of a bus shelter on New South Head Road adjacent to No. 70 New South Head Road (location of the existing bus stop).
- The shelters are to be constructed in accordance with Council's standard bus shelter specifications which will be provided with the S138 Application.
- Where a grass verge exists, the balance of the area between the footpath and the kerb over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of Couch turf.

### Drainage

- Construction of a standard gully pit in the kerb fronting the subject site in accordance with Council's Standard "Grated Gully Pit with extended Kerb Inlet" drawing DR1.
- Construction of approximately 25m of 375mm RCP in-ground drainage line under the road and kerb and gutter at standard depth. The line must connect the new gully pit to the existing Council pit located downstream at 108 Old South Head Road (Corner Laguna Street).
- The developer shall be responsible for carrying out any service investigations to allow a gravity connection.

#### Bond

- A bond of \$105,000 will be used as security to ensure the satisfactory completion of the infrastructure works. The security or bank guarantee must be the original and not have an expiry date.
- Council may use all or part of the Infrastructure Bond as well as the Property Damage Security Deposit to meet the cost of removing or completing the works if they do not meet Council's requirements.
- The Deposit/Bond will not be released until Council has inspected the site and is satisfied that the Works have been completed in accordance with Council approved drawings and to Council requirements

An "Application to carry out works in a Public Road" form (available from Council's web-site <http://www.woollahra.nsw.gov.au>) must be completed and lodged, with the Application fee, at Council's Customer Services counter. 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.

The design of the works must be in accordance with Council's Draft Stormwater Drainage Management DCP (Draft Version 1, Public Exhibition Copy dated 23/08/2004) available from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au). Four weeks should be allowed for assessment.

Access levels and grades to and within the development must match access levels and grades within the road approved under the *Roads Act* 1993.

All public domain design and construction 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 can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au).

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



**Note:** Four (4) weeks is to be allowed for the *Roads Act* 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.

## **C.7 Soil and Water Management Plan – Submission & Approval**

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

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

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

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

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

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

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

## **C.8 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.

## **C.9 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*.

## C.10 Geotechnical and Hydrogeological Design, Certification & Monitoring

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

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

## C.11 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.

## C.12 Car and Commercial Parking Details

The *Construction Certificate* plans and specifications required by clause 139 of the Regulation, must include detailed plans and specifications for all bicycle, car and commercial vehicle parking in compliance with AS2890.3:1993 *Parking Facilities - Bicycle Parking Facilities*, AS/NZS 2890.1:2004 : *Parking Facilities - Off-Street Car Parking* and AS 2890.2:2002 – *Off-Street Parking: Commercial Vehicle Facilities* respectively. The driveway levels on Old South Head Road and Laguna Street are to be amended as follows:

- The existing footpath level and grade at the street alignment of the property must be maintained.
- The internal garage floor slab is to be adjusted on private property to match the existing street alignment levels.
- Any adjustments required between the driveways / garage slab and the street levels are to be carried out internally on private property. The driveway levels are to comply with AS2890.1 and Council's Standard Drawing RF2.
- All vehicles accesses are to have splays (2.0m X 2.0m) in accordance with AS2890.1

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.

## C.13 Stormwater management plan (Site greater than 500m<sup>2</sup>)(Clause 25(2) WLEP 1995)

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

The *Stormwater Management Plan* must detail:

- a. General design in accordance with Cardno ITC P/L, dated 07/06/2010, Dwgs No. N10811-DA-H01 to N10811-DA-H05, Revision 01 other than amended by this and other conditions;
- b. The discharge of stormwater, by direct connection, to Council's in-ground stormwater drainage system;

- c. Construction of a standard gully pit in the kerb fronting the subject site in accordance with Council's Standard "Grated Gully Pit with extended Kerb Inlet" drawing DR1.
- d. Construction of approximately 25m of 375mm RCP in-ground drainage line under the road and kerb and gutter at standard depth. The line must connect the new gully pit to the existing Council pit located downstream at 108 Old South Head Road (Corner Laguna Street).
- e. Compliance the objectives and performance requirements of the BCA;
- f. Any rainwater tank required by BASIX commitments including their overflow connection to the *Stormwater Drainage System*, and
- g. General compliance with the Council's draft Development Control Plan Stormwater Drainage Management (draft version 1.1 public exhibition copy dated 14/12/2006). and
- h. on-site stormwater detention (OSD).

### OSD Requirements

The minimum (OSD) Site Storage Requirements ("SSR") and the Peak Site Discharge ("PSD") from the site must be in accordance with the following minimum storage/discharge relationships based upon a 1000m<sup>2</sup> site area:

Average Reoccurrence Interval	PSD L/s	Minimum Site Storage Requirement (SSR) m <sup>3</sup>
2 year	23.5 L/s	4m <sup>3</sup>
100 year	34 L/s	25m <sup>3</sup> – Dwelling House 27m <sup>3</sup> – Residential Flat Building 29m <sup>3</sup> – Other Development
All values based on per 1000m <sup>2</sup> site area (interpolate to site area).		

Where a rainwater tank is proposed in conjunction with OSD, the volume of the rainwater tank may contribute to the SSR as follows:

- i. Where the rainwater tank is used for external uses only, 40% of the rainwater tank volume to a maximum of 4m<sup>3</sup> or
- ii. Where the rainwater tank is used for external and internal uses, 75% of the rainwater tank volume to a maximum of 7.5m<sup>3</sup>.

**Example:** The Site Storage Requirements may be 25,000 litres and a 10,000 litre rainwater tank is to be used for garden irrigation. Therefore, the rainwater tank contributes 4,000 litres toward SSR. Therefore, the OSD tank needs to be 21,000 litres (25,000 litres less the 4,000 litres allowance). Note: 1m<sup>3</sup> = 1,000 litres.

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,
- Location of On-Site Detention,
- 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, and
- Overland flow paths over impervious areas.

**On-site Detention (OSD) details:**

- Any potential conflict between existing and proposed trees and vegetation,
- Internal dimensions and volume of the proposed detention storage,
- Diameter of the outlet to the proposed detention storage basin,
- Plans, elevations and sections showing the detention storage basin invert level, centre-line level of outlet, top water level, finished surface level and adjacent structures,
- Details of access and maintenance facilities,
- Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary products,
- Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the on-site detention system,
- Non-removable fixing details for orifice plates where used,

Copies of certificates of title, showing the creation of private easements to drain water by gravity, if required.

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.14 Amended Landscape Plan**

An amended Landscape Plan shall be prepared in accordance with Council's DA Guide and conforming to the conditions of this Development Consent. This plan is to be submitted to Council prior to issue of the Construction Certificate. The amended landscape plan must include the following:

Amendments to the proposed street tree species:

- 11 x *Banksia integrifolia* Coastal Banksia street trees, planted along the Old South Head Road verge of the property.
- 5 x *Tristaniaopsis laurina* Water gum street trees, planted along the Laguna Street verge of the property.

**C.15 Amended Stormwater Drainage Plan**

An amended Stormwater Drainage Plan, conforming to the conditions of this Development Consent shall be submitted to Council prior to issue of the Construction Certificate.

Underground services shall not be positioned within the following radial distances:

Council Ref No:	Species	Tree Location	Radius from centre of trunk (metres)
23	<i>Casuarina glauca</i> Swamp She-oak	North western side boundary	4.8

24	<i>Casuarina glauca</i> Swamp She-oak	North western side boundary	4.8
26	<i>Eucalyptus botryoides</i> Southern Mahogany	North western side boundary	4.8
28	<i>Eucalyptus botryoides</i> Southern Mahogany	North western side boundary	4.8
49	<i>Araucaria heterophylla</i> Norfolk Island Pine	South western frontage	9.6

### C.16 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

### C.17 Waste Storage – Mixed Developments (both commercial and residential)

The *Construction Certificate* plans and specifications required by Clause 139 of the Regulation, must include detailed plans and specifications must make provision for:

- a) The storage of waste and recycling bins behind the building line or within non-habitable areas of the building.
- b) Two separate centralised waste and recycling rooms or areas, one for commercial waste and one for residential waste. They must be self-contained and have separate keys and locking systems.
- c) The path for wheeling bins between the waste and recycling storage area and the collection point must be free of steps and kerbs and having a maximum grade of 1:8. The waste storage area must be as close as possible to the service road collection point.
- d) Bins to be stored with lids down to prevent vermin from entering the waste containers.
- e) Smooth impervious floor graded to a floor waste and provided with a tap and hose to facilitate regular cleaning of the bins. 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.
- f) 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.
- g) 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.
- h) Odour problems must be minimised by exhaust ventilation.
- i) 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.
- j) 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.

#### **C.18 Waste Storage - Compliance with Approved Site Waste Minimisation and Management Plan (SWMMP)**

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 SWMMP.

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.

### C.19 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.

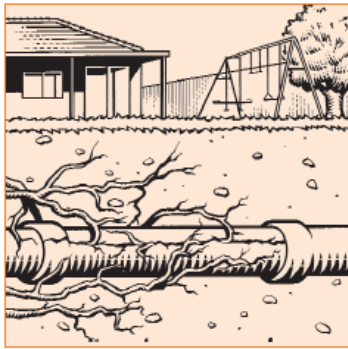
## **C.20 Water and waste water - Section 73 Developers Certificate and Upgrading of existing system (Clause 25(1) WLEP 1995)**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. 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.

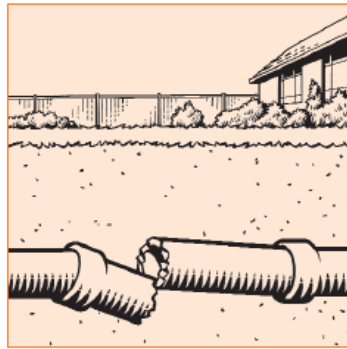
**Note:** Following application to Sydney Water, a 'Notice of Requirements' will detail water and sewer extensions to be built and charges to be paid. Please make early contact with Sydney Water's authorised Coordinator, since building of water/sewer extensions can be time consuming and may impact on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

**Note:** Applications must be made through an authorised Water Servicing Coordinator. For help either visit <http://www.sydneywater.com.au/BuildingDeveloping/DevelopingYourLand/WaterServicingCoordinators.cfm> or telephone 13 20 92.

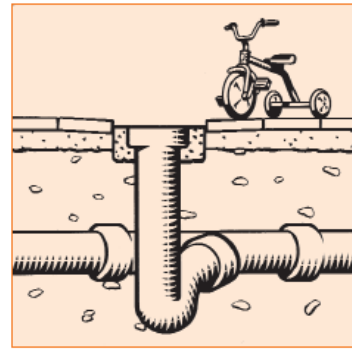
The Construction Certificate plans and specifications, required to be submitted to the Certifying Authority pursuant to clause 139 of the *Regulation*, must detail the replacement of all private sewer pipes between all sanitary fixtures and Sydney Waters sewer main where they are not found by inspection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



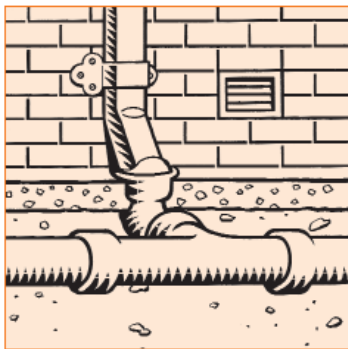
*Cracked pipes*



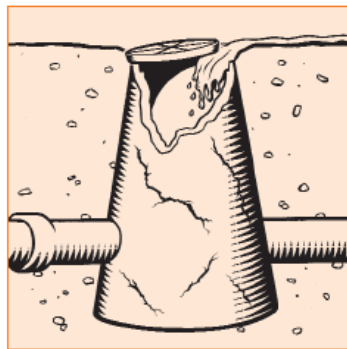
*Broken pipes*



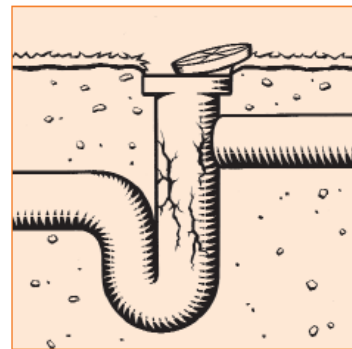
*Damaged or low-lying gullies*



*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>

## C.21 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 certificate from a *professional engineer* (acoustic engineer) certifying that the noise level measured at any boundary of the site at any time while the proposed mechanical plant and equipment is operating will not exceed the *background noise level*. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed *background noise level*, at any time.

The *background noise level* is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the  $L_{A90, 15 \text{ minute}}$  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](http://www.aaac.org.au)).

## C.22 BASIX commitments

The *applicant* must submit to the *Certifying Authority* *BASIX Certificate* No 420802M 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,"

## C.23 Hair Salons and Barbers – Construction Certificate Plans & Specifications

The person with the benefit of this consent must submit to Council details for the construction and fit out of hair salons and barbers premises. Such details must demonstrate compliance with the requirements of the *Local Government (Orders) Regulation* 2005 Schedule 2 '*Standards for hairdresser shops*'.

No *Construction Certificate* relating to the construction or fitout of hair salons and barbers premises must be issued until Council's Environmental Health Officers' have advised in writing that the plans and specification are considered satisfactory.

The details for the construction and fit out of hair salons and barbers premises, as considered satisfactory by Council's Environmental Health Officers' must form part of any *Construction Certificate*.

**Note:** The assessment of hair salons and barbers premises fitout plans and specifications is subject to an adopted fee. The construction and fitout of hair salons and barbers premises is not listed under clause 161 of the *Environmental Planning & Assessment Regulation* 2000 as a matter that a *Certifying Authority* may be satisfied as to. Hence, the detailed plans & specifications must be referred to Council and be to Council's satisfaction prior to the issue of any *Construction Certificate* for such works.

The person with the benefit of this consent must submit to Council details for the construction and fit out of skin penetration premises. Such details must demonstrate compliance with the Public Health Act 1991, the Public Health (Skin Penetration) Regulation 2000, the Guidelines for Skin Penetration 2001 and the Skin Penetration Code of Best Practice.

No *Construction Certificate* relating to the construction or fitout of skin penetration premises must be issued until Council's Environmental Health Officers' have advised in writing that the plans and specification are considered satisfactory.

The details for the construction and fit out of skin penetration premises, as considered satisfactory by Council's Environmental Health Officers' must form part of any *Construction Certificate*.

**Note:** The assessment of skin penetration premises fitout plans and specifications is subject to an adopted fee. The construction and fitout of skin penetration premises is not listed under clause 161 of the *Environmental*

*Planning & Assessment Regulation 2000* as a matter that a *Certifying Authority* may be satisfied as to. Hence, the detailed plans & specifications must be referred to Council and be to Council's satisfaction prior to the issue of any *Construction Certificate* for such works.

## **C.24 Skin Penetration (Beauty Salon) Certificate Plans & Specifications**

The person with the benefit of this consent must submit to Council details for the construction and fit out of skin penetration premises. Such details must demonstrate compliance with the Public Health Act 2010, the Public Health (Skin Penetration) Regulation 2012, the Guidelines for Skin Penetration and the Skin Penetration Code of Best Practice.

No *Construction Certificate* relating to the construction or fitout of skin penetration premises must be issued until Council's Environmental Health Officers' have advised in writing that the plans and specification are considered satisfactory.

The details for the construction and fit out of skin penetration premises, as considered satisfactory by Council's Environmental Health Officers' must form part of any *Construction Certificate*.

**Note:** The assessment of skin penetration premises fitout plans and specifications is subject to an adopted fee. The construction and fitout of skin penetration premises is not listed under clause 161 of the *Environmental Planning & Assessment Regulation 2000* as a matter that a *Certifying Authority* may be satisfied as to. Hence, the detailed plans & specifications must be referred to Council and be to Council's satisfaction prior to the issue of any *Construction Certificate* for such works.

## **C.25 Food Premises – Construction Certificate Plans & Specifications**

The person with the benefit of this consent must submit to Council details for the construction and fit out of food premises. Such details must demonstrate compliance with the *Food Act* 2003, *Food Regulation* 2004; the *Food Standards Code* as published by Food Standards Australia and New Zealand and Australian Standard AS 4674-2004: *Construction and fit out of food premises*.

No *Construction Certificate* relating to the construction or fitout of food premises must be issued until Council's Environmental Health Officers' have advised in writing that the plans and specification are considered satisfactory.

The details for the construction and fit out of food premises, as considered satisfactory by Council's Environmental Health Officers' must form part of any *Construction Certificate*.

**Note:** The assessment of food premises fitout plans and specifications is subject to an adopted fee. The construction and fitout of food premises is not listed under clause 161 of the *Environmental Planning & Assessment Regulation 2000* as a matter that a *Certifying Authority* may be satisfied as to. Hence, the detailed plans & specifications must be referred to Council and be to Council's satisfaction prior to the issue of any *Construction Certificate* for such works.

## **C.26 Light & Ventilation**

The *Construction Certificate* plans and specifications, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail all a lighting, mechanical ventilation or air-conditioning systems complying with Part F.4 of the *BCA* or clause 3.8.4 and 3.8.5 of the *BCA* Housing Provisions, inclusive of [AS 1668.1](#), [AS 1668.2](#) and [AS/NZS 3666.1](#). If an alternate solution is proposed then the *Construction Certificate* application must include a statement as to how the performance requirements of the *BCA* are

to be complied with and support the performance based solution by expert *evidence of suitability*. This condition does not set aside the mandatory requirements of the *Public Health (Microbial Control) Regulation 2000* in relation to *regulated systems*. This condition does not set aside the effect of the *Protection of the Environment Operations Act 1997* in relation to offensive noise or odour.

**Note:** Clause 98 of the Regulation requires compliance with the BCA. Clause 145 of the Regulation prevents the issue of a *Construction Certificate* unless the *Accredited Certifier/Council* is satisfied that compliance has been achieved. Schedule 1, Part 3 of the Regulation details what information must be submitted with any *Construction Certificate*. It is the Applicant's responsibility to demonstrate compliance through the Construction Certificate application process. Applicants must also consider possible noise and odour nuisances that may arise. The provisions of the *Protection of the Environment Operations Act 1997* have overriding effect if offensive noise or odour arises from the use. Applicant's must pay attention to the location of air intakes and air exhausts relative to sources of potentially contaminated air and neighbouring windows and air intakes respectively, see section 2 and 3 of [AS 1668.2](#).

## C.27 Carpark & General Ventilation

- i) All enclosures in which vehicles powered by internal combustion engines are parked are 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 car park and maintain contaminant concentrations below recommended exposure standards.
- ii) The basement car park may 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 vehicle 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.28 Acoustic attenuation requirements

In order to ensure the adequate acoustic attenuation of the development, all requirements contained within the acoustic report and supplement referenced in Condition A.3 and the requirements stipulated by the RMS referenced in Condition A.5 v) are to be indicated on the relevant architectural plans and specifications submitted with the construction certificate application:

## C.29 Swimming and Spa Pools – Backwash

The *Construction Certificate* plans and specification required to be submitted pursuant to clause 139 of the Regulation must detail the connection of backwash to Sydney Waters sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

**Note:** The plans must show the location of Sydney Waters sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

**Note:** The discharge of backwash water to any stormwater system is water pollution and an offence under the *Protection of the Environment Operations Act 1997*. The connection of any backwash pipe to any stormwater system is an offence under the *Protection of the Environment Operations Act 1997*.

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

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

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

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

This condition does not apply:

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

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

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

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

**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):

- (A) 110 – 114 Old South Head Road; and
- (B) 105 – 131 New South Head Road.

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

**Note:** The reasons for this condition are:

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

Also refer to the Dilapidation Report Advising for more information regarding this condition

### D.3 Dilapidation Reports for Public Infrastructure

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

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

- a) Photographs showing any existing damage to the road pavement fronting the site,
- b) Photographs showing any existing damage to the kerb and gutter fronting the site,
- c) Photographs showing any existing damage to the footway including footpath pavement fronting the site,
- d) Photographs showing any existing damage to retaining walls within the footway or road, and
- e) Closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site and
- f) The full name and signature of the professional engineer.

The reports are to be supplied in both paper copy and electronic format in Word. Photographs are to be in colour, digital and date stamped. The dilapidation report must specify (with supporting photographic/DVD evidence) the exact location and extent of any damaged or defective public infrastructure prior to the commencement of any work. If the required report is not submitted then Council will assume there was no damage to any infrastructure in the immediate vicinity of the site prior to the commencement of any work under this consent.

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

### D.4 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 storage of building materials in or access through the # Reserve will not be permitted without prior approval by Council.

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.

## **D.5 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.

## D.6 Erosion and Sediment Controls – Installation

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

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

Where there is any conflict The Blue Book takes precedence.

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

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

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

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

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

## D.7 Adjoining buildings founded on loose foundation materials

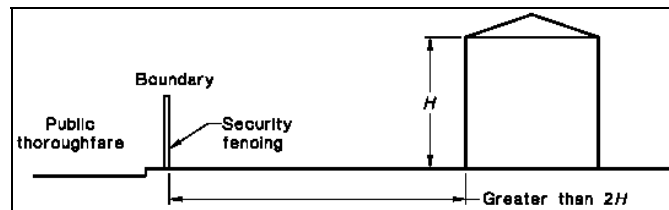
The *principal contractor* must ensure that a *professional engineer* determines the possibility of any adjoining buildings founded on loose foundation materials being affected by piling, piers or excavation. The *professional engineer* (geotechnical consultant) must assess the requirements for underpinning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

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

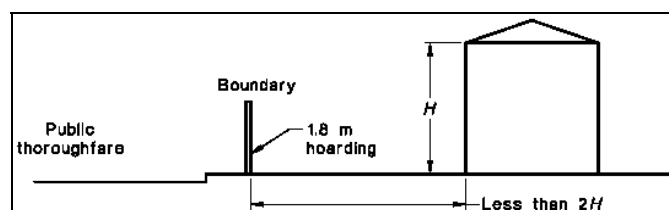
## D.8 Security Fencing, Hoarding and Overhead Protection

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.

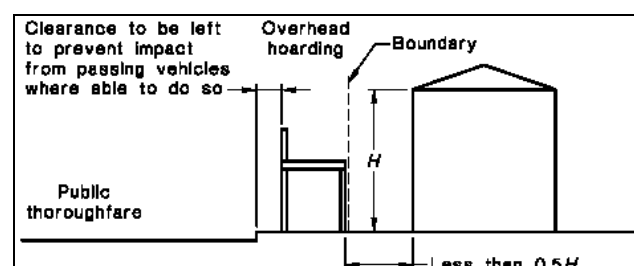


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either:

- 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:

- Extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;
- Have a clear height above the footpath of not less than 2.1 m;
- 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
- Together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa.



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

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

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

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

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

## D.9 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*.

## D.10 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.

## D.11 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

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

- a) A construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and
- b) The person having the benefit of the development consent has:
  - Appointed a principal certifying authority for the building work, and
  - Notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- c) the principal certifying authority has, no later than 2 days before the building work commences:

- Notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
  - Notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- d) The person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
- Appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
  - Notified the principal certifying authority of any such appointment, and
  - Unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - Given at least 2 days' notice to the council of the person's intention to commence the erection of the building.

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

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

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

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

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

## D.12 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.

### **D.13 Construction Noise & Management Plan**

A Construction Noise & Management Plan is to be prepared prior to the commencement of on-site works; the Plan is to identify all construction noise management strategies including but not limited to the following:

- The use of attended noise monitoring which offers the advantage of immediate identification of noise or vibration exceedances at the receiver and ameliorative action required to minimise the duration of the exposure.
- Development of a works schedule which is to identify the type of machinery and equipment that is to be used at the development site and provided for predicted noise impacts at nearest sensitive residential receivers.
- Detail all noise mitigation strategies to be used at the development site, including acoustic screening/enclosures, temporary or otherwise around machinery and equipment during each phase of demolition and construction works and a Consultation/Complaints Handling Procedure.

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

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

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

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

This condition does not apply:

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

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

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

#### **E.2 Tree Preservation**

All persons must comply with Council's Tree Preservation Order (TPO) other than where varied by this consent. The order applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

#### General Protection Requirements

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

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

- d) Replacement/Supplementary trees which must be planted  
Any replacement or supplementary tree shall be grown in accordance with NATSPEC Specifying Trees. The replacement tree shall be maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council's Tree Preservation Order, it must be replaced with another of the same species which complies with the criteria outlined below.

Species/Type	Planting Location	Container Size/Size of Tree (when planting)	Minimum Dimensions at Maturity
In accordance with the approved landscaping plan	In accordance with the approved landscaping plan	In accordance with the approved landscaping plan	In accordance with the approved landscaping plan

The project arborist shall document compliance with the above condition.

- e) Paving in the vicinity of trees

Paving works within the specified radius from the trunks of the following trees shall be constructed in such a way as to ensure that the existing moisture infiltration and gaseous exchange to the tree root system are maintained. When preparing an area for paving within the specified radius the soil surface shall not be skimmed. The new surface shall be established above the former ground level.

Council Ref No:	Species	Radius from centre of trunk (metres)
49	<i>Araucaria heterophylla</i> Norfolk Island Pine	9.6

Paving works are to be designed in consultation with a qualified Arborist (minimum qualification of Australian Qualification Framework Level 4 or recognised equivalent) and are to utilise such measures as semiporous material.

The project arborist shall document compliance with the above condition.

### 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.

### E.4 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.5 Maintenance of Environmental Controls

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

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

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

## E.6 Compliance with Geotechnical/Hydrogeological Monitoring Program

Excavation must be undertaken in accordance with the recommendations of the *Geotechnical / Hydrogeological Monitoring Program* and any oral or written direction of the supervising *professional engineer*. The *principal contractor* and any sub-contractor must strictly follow the *Geotechnical / Hydrogeological Monitoring Program* for the development including, but not limited to;

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

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

## E.7 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*.

## E.8 Vibration Monitoring

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

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

Where any such alarm triggers all excavation works must cease immediately.

Prior to the vibration monitoring equipment being reset by the *professional engineer* and any further work recommencing the event must be recorded and the cause of the event identified and documented by the *professional engineer*.

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

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

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

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

**Note:** *Professional engineer* has the same mean as in Clause A1.1 of the BCA.

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

**Note:** *Supported land* has the same meaning as in section 88K of the Conveyancing Act 1919.

## E.9 Erosion and Sediment Controls – Maintenance

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

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

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



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

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

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

## E.10 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.

### **E.11 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 February 2012.

The *owner, principal contractor or owner builder* must meet all costs associated with such works.

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

**Note:** A copy of Council's "*Specification for Roadworks, Drainage and Miscellaneous Works*" can be downloaded free of charge from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)

### **E.12 Compliance with Australian Standard for Demolition**

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

### **E.13 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..

### **E.14 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.

### **E.15 Hours of Work –Amenity of the neighbourhood**

- a) No *work* must take place on any Sunday or public holiday,
- b) No *work* must take place before 7am or after 5pm any weekday,
- c) No *work* must take place before 7am or after 1pm any Saturday,

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

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

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

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

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

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

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

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

## 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.

#### **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.

#### **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.

### 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.

### E.20 Dust Mitigation

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

This generally requires:

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

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

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

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

### E.21 Food Premises – Construction & Fitout

The *principal contractor* or *owner builder* must ensure that all construction and fitout of the food premises complies with the details for the food premises submitted to and considered satisfactory by Council's Environmental Health Officers but no less compliant than with the *Food Act 2003*, *Food Regulation 2004*; the *Food Standards Code* as published by Food Standards Australia and New Zealand and AS 4674-2004: *Construction and fit out of food premises*.

This condition has been imposed to protect public health and ensure that food premises are easily maintained in a clean condition fit for food preparation and consumption.

## **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.

## **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

**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.

**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.

**F.3 Compliance Certificate from Sydney Water**

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

**Note:** Please refer to “Your Business” section of Sydney Water’s web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the “e-developer” icon or telephone 13 20 92.

**F.4 Amenity Landscaping**

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

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

## F.5 Commissioning and Certification of Systems and Works

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

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

- a) Certification from the supervising professional engineer that the requirement of the Geotechnical / Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- b) All flood protection measures.
- c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1 – “Off-Street car parking.”
- d) All stormwater drainage and storage systems.
- e) All mechanical ventilation systems.
- f) All hydraulic systems.
- g) All structural work.
- h) All acoustic attenuation work.
- i) All waterproofing.
- j) Such further matters as the Principal Certifying Authority may require.

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

## F.6 Inspection, Certification and Registration of Regulated Systems

Prior to the issue of any *Occupation Certificate* or occupation or use of part of the building serviced by a *regulated system* the *principal contractor* or *owner builder* must submit to the satisfaction of *PCA* certification by a ‘*competent person*’ that the regulated system as installed can operate as required by Clause 9 of the *Public Health (Microbial Control) Regulation*, 2000.

The owner must register the regulated systems with Council and provide the PCA with evidence of registration pursuant to Clause 15 of the *Public Health (Microbial Control) Regulation, 2000*.

**Note:** *Regulated System* has the same mean as in the Public Health Act 1991.

**Note:** *Competent person* has the same meaning as in Clause 9(3) of the *Public Health (Microbial Control) Regulation, 2000*.

**Note:** The NSW Code of Practice for the Control of Legionnaires' Disease can be down loaded free from:  
[http://www.health.nsw.gov.au/pubs/2004/pdf/legionnaires\\_disease.pdf](http://www.health.nsw.gov.au/pubs/2004/pdf/legionnaires_disease.pdf)

## **F.7 Commissioning and Certification of Public Infrastructure Works**

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

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

## **F.8 Street Numbering**

The development must be provided with street and sole occupancy unit numbers determined by Council. This condition has been imposed to ensure that emergency services, utility services, and the general public are able to clearly and readily locate any property. Further, this condition has been imposed to protect the integrity of street numbering and land information.

**Note:** Applications for the allocation of street and sole occupancy unit numbers should be made together with any application for a strata certificate or Torrens or community title subdivision certificate. Council will determine at its discretion in accordance with its policy street numbers and street addresses that best suit the public interest.

## **F.9 Letter Boxes**

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.

## **F.10 Food Premises - Inspection and Registration**

Prior to the issue of any *Occupation Certificate* or occupation or use of any food premises:

- a) The *Principal Contractor* or *owner* must arrange an inspection of the fit out of the Food Premises by Council's Environmental Health Officer;
- b) A satisfactory final inspection must have been undertaken by Council's Environmental Health Officer; and
- c) The *owner* or *occupier* must have registered the Food Premises (Notification of conduct under section 100 of the *Food Act 2003*).

**Note:** Notification can be done on-line [at www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au)

**Note:** Inspections are subject to payment of the adopted inspection fee.

**Note:** Section 100 of the *Food Act* 2003 requires:

“100 Notification of conduct of food businesses

(1) The proprietor of a food business must not conduct the food business unless the proprietor has given written notice, in the approved form, of the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the business is conducted. Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.”

**Note:** *Accredited Certifiers* are unable to issue *Compliance Certificates* in relation to compliance with the *Food Act* 2003, *Food Regulation* 2004; the Food Standards Code and the Australian Standard AS 4674-2004: *Construction and fit out of food premises*; since these are not matters which an *Accredited Certifier* can be satisfied in relation to under Clause 161 of the *Regulation*. This condition can only be satisfied following an inspection and sign off from Council’s Environmental Health Officers.

## **F.11 New Waste Services**

No occupation certificate must be issued until the owner/developer has procured the provision of required wastes services including purchase of all waste and recycling storage containers (bins and crates) from Council or otherwise in accordance with the approved *Waste Management Plan*.

## **F.12 Signalled Pedestrian Crossing – New South Head Road / Laguna Street**

The applicant is to pay all costs associated with the design and installation of the signalised pedestrian crossing at the intersection of New South Head Road and Laguna Street. The design and installation is to be undertaken in consultation with the community and submitted and approved by the RMS. The installation of the signalised pedestrian crossing is to be completed prior to the issue of the occupation certificate. This condition is imposed with regard to increase in pedestrian movements of the proposed development.

## **F.13 Skin Penetration – Registration and Maintenance of Skin Penetration Premises**

The skin penetration premises must be registered with Council and maintained in accordance with:

- a) [\*Public Health Act 1991 No 10\*](#),
- b) [\*Public Health \(Skin Penetration\) Regulation 2000\*](#) (“the Regulation”), and
- c) *Guidelines of Skin Penetration* under Clause 10 of the Regulation.

This condition has been imposed to protect public health.

**Note:** A fee is charged by Council for an inspection of such premises.

**Note:** Further detailed information about skin penetration requirements can be obtained from the NSW Department of Health’s web site: <http://www.health.nsw.gov.au/public-health/ehb/general/skinpen/skinpen.html>

## **F.14 Beauty Salons**

The beauty salon must be registered with Council and maintained in accordance with NSW Health Department Guidelines and Fact Sheets as published from time to time.

There must be no *skin penetration procedures* undertaken at the premises unless development consent has been specifically granted for such *skin penetration procedures*, the premises are registered with Council for *skin penetration procedures* and maintained in accordance with the requirements of the [\*Public Health Act 1991 No 10\*](#).

This condition has been imposed to protect public health.

**Note:** Skin Penetration Procedure has the same means as in section 51(3) of the [\*Public Health Act 1991 No 10\*](#). Fees are charged by Council for both registration and inspection of such premises. Further detailed information about skin penetration requirements can be obtained from the NSW Department of Health's web site: <http://www.health.nsw.gov.au/public-health/ehb/general/skinpen/skinpen.html>

## **F.15 Hair Salons & Barbers**

The hair salon and barber premises must be registered with Council and maintained in accordance with NSW Health Department Guidelines and Fact Sheets as published from time to time.

There must be no *skin penetration procedures* undertaken at the premises unless development consent has been specifically granted for such *skin penetration procedures*, the premises are registered with Council for *skin penetration procedures* and maintained in accordance with the requirements of the [\*Public Health Act 1991 No 10\*](#).

This condition has been imposed to protect public health.

**Note:** *Skin Penetration Procedure* has the same means as in section 51(3) of the [\*Public Health Act 1991 No 10\*](#). A fee is charged by Council for an inspection of such premises. Further detailed information about skin penetration requirements can be obtained from the NSW Department of Health's web site: <http://www.health.nsw.gov.au/public-health/ehb/general/skinpen/skinpen.html>

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

### **G.1 Electricity Substations – Dedication as road and/or easements for access**

If an electricity substation, is required on the site the owner must dedicate to the appropriate energy authority (to its satisfaction), free of cost, an area of land adjoining the street alignment to enable an electricity substation to be established. The size and location of the electricity substation is to be in accordance with the requirements of the appropriate energy authority and Council. The opening of any access doors are not to intrude onto the public road (footway or road pavement).

Documentary evidence of compliance, including correspondence from the energy authority is to be provided to the *Principal Certifying Authority* prior to issue of the Construction Certificate detailing energy authority requirements.

The Accredited Certifier must be satisfied that the requirements of energy authority have been met prior to issue of the Construction Certificate.

Where an electricity substation is provided on the site adjoining the road boundary, the area within which the electricity substation is located must be dedicated as public road. Where access is required across the site to access an electricity substation an easement for access across the site from the public place must be created upon the linen plans burdening the subject site and benefiting the Crown in right of New South Wales and any Statutory Corporation requiring access to the electricity substation.

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

### **H.1 Landscaping**

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

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

### **H.2 Road Works (including footpaths)**

The following works must be completed to the satisfaction of Council, in accordance with the *Roads Act 1993* approvals and comply with Council's "*Specification for Roadworks, Drainage and Miscellaneous Works*" dated February 2012 unless expressly provided otherwise by these conditions at the *principal contractor's* or *owner's* expense:

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

**Note:** Security held by Council pursuant to section 80A(6) of the Act will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the *Final Occupation Certificate* to Council. This form can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or obtained from Council's customer service centre.

### **H.3 Positive Covenant & Works-As-Executed certification of stormwater systems**

On completion of construction work, stormwater drainage works are to be certified by a *professional engineer* with Works-As-Executed drawings supplied to the *PCA* detailing:

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

- f) A positive covenant pursuant to Section 88E of the *Conveyancing Act* 1919 must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the on-site-detention system and/or absorption trenches, including any pumps and sumps incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered at the Land Titles Office.

**Note:** The required wording of the Instrument can be downloaded from Council's web site [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au). The PCA must supply a copy of the WAE Plans to Council together with the *Final Occupation Certificate*. The *Final Occupation Certificate* must not be issued until this condition has been satisfied.

#### **H.4 Fulfillment of BASIX commitments – Clause 154B of the Regulation**

All BASIX commitments must be effected in accordance with the BASIX Certificate No. 420802M.

**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."

#### **H.5 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*.

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

#### **I.1 On-going maintenance of the on-site-detention system**

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

- a) Permit stormwater to be temporarily detained by the system;
- b) Keep the system clean and free of silt rubbish and debris;
- c) If the car park is used as a detention basin, a weather resistant sign must be maintained in a prominent position in the car park warning residents that periodic inundation of the car park may occur during heavy rain;
- d) Maintain renew and repair as reasonably required from time to time the whole or part of the system so that it functions in a safe and efficient manner and in doing so complete the same within the time and in the manner reasonably specified in written notice issued by the Council;
- e) Carry out the matters referred to in paragraphs (b) and (c) at the Owners expense;



- f) Not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly;
- g) Permit the Council or its authorised agents from time to time upon giving reasonable notice (at anytime and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant;
- h) Comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time reasonably stated in the notice;
- i) Where the Owner fails to comply with the Owner's obligations under this covenant, permit the Council or its agents at all times and on reasonable notice at the Owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations;
- j) Indemnify the Council against all claims or actions and costs arising from those claims or actions which Council may suffer or incur in respect of the system and caused by an act or omission by the Owners in respect of the Owner's obligations under this condition.

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

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

## **I.2 Maintenance of BASIX commitments**

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. 420802M.

**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.

## **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](http://www.health.nsw.gov.au/pubs/2004/pdf/legionnaires_disease.pdf).

## **I.4 Swimming and Spa Pools / Baths – Maintenance**



Swimming/Spa Pools and Baths must be maintained:

- a. in compliance with the NSW Health “Public Swimming Pool and Spa Pool Guidelines” in force at that time. Private pools are encouraged to comply with the same standards as applicable;
- b. in compliance with AS 1926.3-2003:Swimming pool safety - Water recirculation and filtration systems ;
- c. with backwash being discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996, and

**Note:** The NSW Health Public Swimming Pool and Spa Pool Guidelines can be down loaded free from:  
<http://www.health.nsw.gov.au/public-health/ehb/general/pools/poolguidelines.pdf>

## **I.5 Waste Management**

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

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

Receptacles are not to be stored in any public place at 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.

## **I.6 Annual Fire Safety Statements (Class 1b to 9c buildings inclusive)**

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

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

## **I.7 Food Premises - Maintenance of Food Premises**

The food premises must be maintained in accordance with the *Food Act 2003*, *Food Regulation 2004*; the Food Standards Code as published by Food Standards Australia and New Zealand and Australian Standard AS 4674-2004: *Construction and fit out of food premises*.

This condition has been imposed to protect public health.

**Note:** The provisions of the Food Act 2003 may change over time and irrespective of this condition compliance with this *Act*, regulations, food standards and other standards adopted under the Food Act (as amended) are mandatory. The *Food Act* and applicable regulations can be accessed free of charge at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

## I.8 Outdoor lighting

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

All lighting to be installed on the roof terrace will be recessed lights or will be surface wall/balustrade mounted lights at a maximum height of 600 mm above the finished floor level of the roof terrace.

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

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

## I.9 Noise Control

The use of the premises must not give rise to the transmission of *offensive noise* to any place of different occupancy. *Offensive noise* is defined in the *Protection of the Environment Operations Act 1997*. This condition has been imposed to protect the amenity of the neighbourhood.

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

### Useful links:

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

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

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

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

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

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

## **I.10 Maintenance of Sound Attenuation**

Sound attenuation must be maintained in accordance with the *Acoustic Report and supplement* referenced in Condition A.3.

## **I.11 Noise from mechanical plant and equipment**

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

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

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

**Note:** Words in this condition have the same meaning as in the:  
*NSW Industrial Noise Policy* ([http://www.environment.nsw.gov.au/resources/ind\\_noise.pdf](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.

## **I.12 Rainwater Tank – Operation and Maintenance**

All rainwater tank systems shall be operated and maintained in accordance with the technical provisions of the NSW Code of Practice for Plumbing and Drainage 3rd Edition 2006, AS/NZS 3500 as adopted by the Building Code of Australia, and the NSW Health Guideline "Use of Rainwater Tanks Where a Public Water Supply is Available".

**Note:** The NSW Health Guideline can be downloaded from [http://www.health.nsw.gov.au/policies/gl/2007/pdf/GL2007\\_009.pdf](http://www.health.nsw.gov.au/policies/gl/2007/pdf/GL2007_009.pdf). The guideline's introduction states: "In urban areas the public water supply remains the most reliable source of good quality drinking water for the community. In these areas NSW Health supports the use of rainwater tanks for non-drinking uses, such as toilet flushing, washing clothes or in water heating systems, and outdoors for uses such as garden watering, car washing, filling swimming pools, spas and ornamental ponds, and fire fighting. Use of rainwater conserves the public water supply and helps to reduce stormwater impacts. In urban areas NSW Health recommends that people use the public water supply for drinking and cooking because it is filtered, disinfected and generally fluoridated."

## **J. Advisings**

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

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

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

- a) Issue Penalty Infringement Notices (On-the-spot fines);
- b) Issue notices and orders;
- c) Prosecute any person breaching this consent; and/or

- d) Seek injunctions/orders before the courts to restrain and remedy any breach.

#### Warnings as to potential maximum penalties

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

#### Warning as to enforcement and legal costs

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

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

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

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

## **J.2 Dial before you dig**



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

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

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

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

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

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

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

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

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

The Rose Bay Local Area Command closely aligns with the boundaries of the Woollahra local government area. Council and Police approval is required prior to a partial or full temporary road closure. If you are seeking a partial or full temporary road closure you must comply with the relevant conditions of this consent and you must also gain the approval of the Traffic Sergeant, Paddington Police Station, 16 Jersey Road, Paddington. Phone No.: 0283568299 or Fax No.: 0283568211.

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

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

Section 81A of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appointed a *principal contractor* for residential building work who must be the holder of a contractor licence. Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder): <http://www.dft.nsw.gov.au/building.html> .

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

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

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

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

The NSW Office of Fair Trading have published a “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8. The guide can be obtained from the Office of Fair Trading by calling 13 32 20 or by Fax: 9619 8618 or by post to: Marketing Branch, PO Box 972, Parramatta NSW 2124. The Guide can be down loaded from: <http://www.fairtrading.nsw.gov.au/pdfs/corporate/publications/dft242.pdf>

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

#### J.7 Workcover requirements

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

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

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

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

## **J.8 Asbestos Removal, Repair or Disturbance**

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

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

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

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

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

## **J.9 Lead Paint**

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

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

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

## **J.10 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/>.

## **J.11 Appeal**

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact David Booth, Senior Assessment Officer, on (02) 9391 7119.

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.

## **J.12 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>

## **J.13 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.

#### **J.14 Pruning or Removing a Tree Growing on Private Property**

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

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

#### **J.15 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.

#### **J.16 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 requested and may be used by them in the event of a dispute relating to damage allegedly due to the carrying out of the development.
- b) This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.
- c) Council will not be held responsible for any damage which may be caused to adjoining buildings as a consequence of the development being carried out.
- d) Council will not become directly involved in disputes between the Developer, its contractors and the owners of neighbouring buildings.
- e) In the event that access for undertaking the dilapidation survey is denied the applicant is to demonstrate in writing to the satisfaction of the 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.

#### **J.17 Roads Act Application**

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

- Construction of driveways and/or new or alterations to footpath paving
- Alteration and/or extension to Council drainage infrastructure
- Alteration and/or addition of retaining walls
- Pumping of water to Council's roadway
- Installation of soil/rock anchors under the roadway

An "Application to carry out works in a Public Road" form must be completed and lodged, with the Application fee, at Council's Customer Services counter. Detailed plans and specifications of all works (including but not limited to structures, road works, driveway



crossings, footpaths and stormwater drainage etc) within existing roads, must be attached, submitted to and approved by *Council* under Section 138 of the *Roads Act* 1993, before the issue of any *Construction Certificate*.

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

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

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

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

Note: any adjustments required from the garage slab and the street levels are to be carried out internally on private property

Drainage design works must comply with the Council's draft Development Control Plan Stormwater Drainage Management (Draft Version 1.1, Public Exhibition Copy dated 14 December 2006), and

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

All public domain works must comply with Council's "*Specification for Roadworks, Drainage and Miscellaneous Works*" dated February 2012 unless expressly provided otherwise by these conditions. This specification and the application form can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) .

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

**Note:** When a large *Roads Act* is required, then four (4) weeks is to be allowed for assessment.

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

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

David Booth  
**SENIOR ASSESSMENT OFFICER**

Eleanor Smith  
**ACTING TEAM LEADER**

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## **ANNEXURES**

1. Plans and elevations.
2. Development and Traffic Engineers' comments.
3. Tree and Landscape Officer's comments.
4. Heritage Officer's comments.
5. Community Services Officer's comments.
6. Environmental Health Officer's comments.
7. Fire Safety Officer's comments.
8. Urban Design Planner's comments.
9. Environment and Sustainability Officer's comments:
10. RMS' comments.
11. Design verification statement.
12. Feasibility letter from Sydney Water.