

COUNCIL ASSESSMENT REPORT

Panel Reference	2016SCL002
DA Number	DA502/2016/1
LGA	Woollahra
Proposed Development	The consolidation of 2 allotments, alterations and additions to the existing heritage listed dwelling-house at 6 Queens Ave, the demolition of an existing dwelling-house at 8 Queens Ave and the construction of a new dwelling to form a horizontally attached (at lower ground floor level) dual occupancy development, swimming pool, landscaping & earthworks
Street Address	6 & 8 Queens Avenue Vaucluse
Applicant/Owner	Mr J & Ms Y Lin
Date of DA lodgement	18/11/2016
Number of Submissions	3
Recommendation	Conditional approval
Regional Development Criteria (Schedule 4A of the EP&A Act)	Cost of works in excess of \$20 million (\$22,093,500)
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • SEPP (Building Sustainability Index: BASIX) 2004 • SEPP 55-Remediation of Land • SREP (Sydney Harbour Catchment) 2005 • Draft SEPP (Coastal Management) 2016 • Woollahra LEP 2014 • Woollahra DCP 2015 • Woollahra Section 94A Contributions Plan • Clause 92 of the EPA Regulation 2000
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Plans, elevations and sections • Landscape plans • Development Engineer's referral response • Tree and Landscape Officer's referral response • Heritage Officer's referral response • Clause 4.6 written request to vary Council's 9.5m height standard
Report prepared by	David Booth - Senior Assessment Officer
Report date	July 2017

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **No**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

**Yes (the
assessment
report was
made public as
part of
Council's
consideration
of the matter)**

DEVELOPMENT APPLICATION ASSESSMENT REPORT

FILE No.	DA502/2016/1
ADDRESS	6 & 8 Queens Avenue Vacluse
ZONING	R2 Low Density Residential
PROPOSAL	The consolidation of 2 allotments, alterations and additions to the existing heritage listed dwelling-house at 6 Queens Ave, the demolition of an existing dwelling-house at 8 Queens Ave and the construction of a new dwelling to form a horizontally attached (at lower ground floor level) dual occupancy development, swimming pool, landscaping & earthworks
COST OF WORKS	\$22,093,500
DATE LODGED	18/11/2016
APPLICANT	Mr J Lin
OWNER	Ms Y Lin
AUTHOR	Mr D Booth
TEAM LEADER	Ms E Smith
SUBMISSIONS	Three
RECOMMENDATION	Conditional approval

1. LOCALITY PLAN



2. LEVEL OF DELEGATION

The Sydney Central Planning Panel is the consent authority with regard to the subject development application, as it involves a cost of works in excess of \$20 million (\$22,093,500).

3. RELEVANT HISTORY

DA514/2011 for the demolition of the existing dwelling-house (retention of some existing building fabric) and carport; substantial alterations and additions including a new first floor level (new dwelling-house) on land at 8 Queens Avenue Vacluse was originally approved on 5 May 2014 and subsequently modified on 20 July and 14 December 2015.

The subject application makes reference to the approved building envelope associated with DA514/2011/4 in justifying building envelope non-compliances and view impacts upon adjoining properties associated with the proposed new dwelling at 8 Queens Avenue.

The applicant has confirmed that all of the documented comparative analyses (including building envelope and view loss impacts) involving the proposed dwelling at 8 Queens Avenue accurately reflect the approved development DA514/2011/4 including all relevant modified conditions of the consent.

4. PROPOSAL

The proposal involves the consolidation of 2 allotments, alterations and additions to the existing heritage listed dwelling-house at 6 Queens Ave, the demolition of an existing dwelling-house at 8 Queens Ave and the construction of a replacement dwelling to form a dual occupancy development that is horizontally attached at lower ground floor level. As this level is predominantly excavated below existing ground level, the proposal will appear as 2 detached dwellings from above-ground perspectives.

The proposed new dwelling at 8 Queens Ave consists of 2-3 levels with flat roof forms. The third level component relates to the northern section. The lower ground floor level is predominantly excavated below existing ground level such that the proposed dwelling would present 1-2 storeys from above-ground perspectives. Extensive solar panelling is proposed to the flat roof forms with the majority of remainder of the flat roof areas landscaped.

Vehicular access to both dwellings is proposed via the southern section of 8 Queens Avenue at ground floor level, ramping down to a connecting car parking structure between the 2 dwellings at lower ground floor level containing a total of 8 fully functional off-street car parking spaces comprised of 4 visitors spaces and 4 residents spaces. Each dwelling is proposed to be allocated 2 visitor car spaces and 2 resident car spaces. Additionally, a tandem 2 car space storage area is proposed behind the residential car spaces 1 & 2 pertaining to the dwelling located at 6 Queens Avenue and 1 car space is retained under the existing entry portico to the heritage item. A total of 11 car spaces are proposed.

External additions to the heritage listed dwelling-house at 6 Queens Avenue are limited to the northern extension of the lower ground floor level involving substantial excavation beneath the northern half of the existing dwelling-house to a depth of approximately 2.2-3.2m.

Otherwise, the proposed alterations to the heritage item are primarily limited to conservation, restoration and adaption works principally involving the replacement of existing windows and doors with new metal framed, high performance glazing, the addition of 2 sets of double doors to provide

access to the western terrace at Level 1 from Bedrooms 1 & 3, internal alterations, modified front entrance (northern elevation at ground floor level) and the replacement of air-conditioning condensers to the existing centrally located rooftop mechanical plant deck.

It is proposed to excavate the north-western section of the consolidated sites to a depth of 3.6-5.2m to facilitate a pool, spa, associated terrace area with a large suspended landscaped podium over at a level approximately 0-400mm above existing ground level. The upper 2.38-4.18m of the western 9.3m section of the existing northern boundary retaining wall is proposed to be demolished, presumably to facilitate winter solar access and views to the western pool/ spa area.

Extensive landscaping works are proposed including the removal of the majority of the 12 trees and well established hedges from the site. Only 1 Kentia Palm is proposed to be retained.

5. EXECUTIVE SUMMARY

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

Clause	Development Standard	Departure from Control	Conclusion	Section
Part 4.3	Height of Buildings	4m or 42% departure from the 9.5m control	Satisfactory	13.4

5.2. Other Issues

Issue	Conclusion	Section
Objectors' concerns	The proposal is considered to be satisfactory notwithstanding the concerns raised by the objectors to the proposal, subject to the potential loss of privacy mitigation measure required by recommended Condition C.1a and structural engineering safeguards in relation to the existing common boundary retaining wall between the subject site and the adjoining property to the north (see recommended Conditions A.3, C.5, C.6, D.8 & E.7)	8.1
Boundary setback non-compliances	Satisfactory, on the basis that the proposed setbacks are similar to that as approved under DA514/2011/4.	14.2
Excavation volume and setback non-compliances	Satisfactory, subject to recommended Condition C.1f reducing the extent of the proposed excavation and geotechnical/hydrogeological and construction management related conditions	14.2
Wall height and inclined plane non-compliances	Satisfactory due to the absence of any significant adverse environmental impacts.	14.2
Off-street car parking provision exceeds Council's maximum requirement	Satisfactory due to the absence of any significant adverse environmental impact.	14.3
Deep soil landscaped area non-compliances	Satisfactory due to the absence of any significant adverse environmental impact.	14.2
Landscaping associated view loss	Addressed by recommended Condition C.1b .	14.2
Front fence (gate) height non-compliance	Addressed by recommended Condition C.1c .	14.2
Heritage related issues	Addressed by recommended Conditions B.7, B.8, C.1d, C.1e and E.1	13.6

6. SITE AND LOCALITY

The subject sites collectively have:

- a 40m south-eastern frontage to Queens Avenue;

- a 22.7m southern side boundary to the adjoining property 4 Queens Avenue which is occupied by a 2 storey dwelling-house;
- a 63m combined western side boundary to 1 Little Queens Lane and 22E Vacluse Road which are both occupied by 2 storey dwelling-houses;
- a 61m rear (northern) boundary to 22B Vacluse Road which is occupied by a 2 storey dwelling-house;
- a 41.7m eastern side boundary to 10 Queens Avenue which is occupied by a 2 storey dwelling-house; and
- an area of 2939.4m².

The western allotment (6 Queens Avenue) is occupied by a 2-3 storey heritage listed dwelling-house. The eastern allotment (8 Queens Avenue) is occupied by a single storey dwelling-house.

7. REFERRALS

Referral	Summary of Comment	Annexure
Development Engineer	Satisfactory, subject to conditions	3
Tree and Landscape Officer	Satisfactory, subject to conditions	4
Heritage Officer	Satisfactory, subject to a condition	5

ENVIRONMENTAL ASSESSMENT UNDER SECTION 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

8. ADVERTISING AND NOTIFICATION

8.1. Submissions

The application was correctly advertised and notified from 19/12/2016 to 16/01/2017 in accordance with the relevant provisions of Woollahra DCP 2015. Three objections were received from:

1. **M & H Correa - 18 Vacluse Road, Vacluse;**
2. **K & T Mayer – 10 Queens Avenue, Vacluse;**
3. **E Szewczyk of Edward Szewczyk and Associates Architects, 14 Russell Street Woollahra 2025 on behalf of T & C Paleologos – 22B Vacluse Road, Vacluse.**

The objectors raised the following concerns:

- *The accuracy of the view analysis in relation to the adjoining property 18 Vaocluse Road is questioned in terms of the documentation of a complaint building envelope*

The documentation of a complaint building envelope aspect of the view analysis is considered to be acceptably accurate.

- *The accuracy of the view analysis in relation to the adjoining property 18 Vaocluse Road is questioned in terms of the documentation of existing views*

An independent view loss inspection of 18 Vaocluse Road was conducted on 17 January 2017 and photographs taken of the disputed views were forwarded to the applicant for analysis. An amended view analysis based upon these photos was submitted to Council on 3 March 2017 and has been included in the view analysis under section 14.2 Chapter B3: General Development Controls Part 3.5.3: Public and Private Views.

- *The argument that the extent of view loss associated with the proposal upon the adjoining property 18 Vaocluse Road is acceptable on the basis that it will be less than that associated with the approved building envelope associated with DA514/2011/4 should not be accepted on the basis that the subject proposal involves a much greater site area due to the proposed consolidation of 6 & 8 Queens Avenue and therefore the 2 schemes are separate and distinct from one another*

On the basis that development consent DA514/2011 granted on 5 May 2014 remains valid, it is considered appropriate to assess the reasonableness of the impact of the subject proposal upon the views of adjoining properties based upon a comparative analysis with the modified consent DA514/2011/4. The consolidated site is also constrained by the existing heritage item (6 Queens Avenue).

- *The accuracy of the view analyses is questioned. Surveyor certified height poles of the proposed building envelope should be required to be erected*

The view analyses have been prepared by a qualified architect and are considered to be acceptable in terms of their accuracy. By providing a comprehensive comparative analysis of the proposal and the approved building envelope associated with DA514/2011/4, the view analyses are considered to be more informative than the limited building envelope depiction that is typically provided by height poles.

- *The proposed new dwelling on 8 Queens Ave will result in a greater than “moderate” loss of views to 18 Vaocluse Road which is unreasonable on the basis that the proposal is non-compliant with a number of Council’s building envelope controls, the subject dwellings will enjoy unobstructed panoramic views and that the proposed consolidated allotments would allow for an alternative proposal that would not cause an unreasonable loss of views. At the very least the proposal should be lowered to reduce the extent of view loss to the affected adjoining properties (18 Vaocluse Road and 10 Queens Avenue) via the relocation of part of the above-ground building envelope to the proposed excavated area and /or via a 500mm reduction to the proposed height of the 3 level northern component by the lowering of the floor-to-ceiling height at ground floor level from 3.2m to 2.7m.*

The extent of view loss to the affected adjoining properties (18 Vaocluse Road and 10 Queens Avenue) associated with the proposed new dwelling at 8 Queens Avenue is considered to be reasonable on the basis that it will be less than that associated with the approved building envelope associated with DA514/2011/4 and would result in a lesser impact upon iconic views from 18 Vaocluse Road than would a compliant building envelope scheme. It should be noted that the proposed new dwelling complies with Council's 9.5m height development standard and that the entire proposal complies with Council's floorplate DCP control. This issue is discussed in greater depth under the section *14.2 Chapter B3: General Development Controls Part 3.5.3: Public and Private Views*.

- *The proposal involves a number of non-compliances with Council's planning controls*

Whilst the proposal does not comply with several of Council's planning controls, it is considered that the proposal is satisfactory in terms of the objectives underlying the controls and will not have any significant adverse environmental impacts upon the locality. These issues are discussed in greater depth under subsequent sections of the report.

- *Adverse visual impact (excessive bulk and scale) associated with the non-compliant eastern side boundary setback at first floor level of the proposed new dwelling on 8 Queens Ave. In this regard, the proposed 2m setback is 500mm less than the approved 2.5m setback of the approved scheme DA514/2011/4*

The proposed 2m eastern side boundary setback at first floor level is considered to be adequate in terms of maintaining the visual amenity of the adjoining property 10 Queens Avenue whose outlook is primarily orientated towards the north and north-west rather than to the west towards the subject eastern elevation.

- *Potential loss of privacy to the northern terrace to 10 Queens Avenue associated with the proposed north-facing window to Bedroom 3 at first floor level. To address this issue, it is requested that proposed privacy louvres to the window be required to be operable but not retractable and that the operable range be limited to prevent lines of sight to the east toward the northern terrace to 10 Queens Avenue*

This request has been agreed to by the applicant and is addressed by recommended **Condition C.1a**.

- *Loss of privacy to the western private open space area of 22B Vaocluse Road, adverse visual impacts upon the locality, including the harbour and adverse heritage related impacts associated with the proposed lowering/ partial demolition of the western section of the existing northern boundary wall. The wall is not addressed in the Heritage Impact Statement*

The upper 2.38-4.18m of the western 9.3m section of the existing northern boundary wall is proposed to be demolished, presumably to facilitate winter solar access, views to the western pool/spa area. However, it is considered that the 1.8m high, above the proposed pool terrace level, section of the wall that is proposed to be maintained to the eastern 5.4m of the subject section will adequately screen lines of sight to the private open space area of 22B Vaocluse Road.

It is considered that the proposed partial demolition of the existing northern boundary wall will not result in any significant adverse visual impacts upon the locality including the harbour.

Council's Heritage Officer has raised no objection to this aspect of the proposal. The existing northern boundary wall is not listed as a heritage item.

- *Potential overlooking of 22B Vaocluse Road from the northern elevation of the Ground floor level and Level 1 of the new dwelling at 8 Queens Avenue. Inconsistencies in the documentation of the proposed landscaping on the architectural drawings 1100 and 1102. It is requested that a row of 3-4m high, above existing ground level, (6-7m above the proposed excavated finished ground level) trees be provided adjacent to the eastern section of the northern boundary to screen lines of sight*

The proposed landscaping documented on the Landscape Plan 01B that is recommended for approval by Council's Tree and Landscape Officer takes precedence over any landscaping indicated on the architectural plans. In this regard, a row of 11 x 10m high (hedged) above the proposed excavated finished ground level Magnolia grandiflora 'Exmouth' trees in 400 litre pots at planting are proposed adjacent to the eastern 30m of the northern (rear) boundary which would satisfy the above-mentioned request.

However, as discussed below under the section *14.2 Chapter B3: General Development Controls Part 3.5.3: Public and Private Views*, this landscaping would result in the substantial and unreasonable obstruction of iconic views from 10 Queens Avenue. Accordingly, it is recommended that an alternative species of landscaping to the rear setback area such as a variety of Lilly Pilly be required that will not exceed RL36 at maturity (see **Condition C.1b**). This equates to a level of approximately 6m above the proposed excavated finished ground level and approximately 3m above the section of the existing ground level adjacent to the northern elevation of the proposed new dwelling that is required to be retained by **Condition C.1f**. This is considered to be satisfactory in terms of providing adequate screening.

- *The proposed excavation adjacent to the north (rear boundary) may compromise the structural integrity of the existing retaining wall to the common boundary with 22B Vaocluse Road (the northern/ rear boundary of the subject consolidated sites). The engineering solution may limit soil depth and therefore the potential for the provision of adequate landscaping adjacent to the northern (rear) boundary of the consolidated sites.*

On 3 March 2017, the applicant submitted additional structural engineering details addressing this issue stating that:

Sleeved concrete piers will be installed from the existing garden level at approximately 1800mm centres (the spacing between each pier), steel soldier piers will be dropped into concrete piers and the existing garden level will be excavated down to the proposed level in a staged manner. The sleeving to the pile will be removed and the existing retaining wall will be secured to the steel soldier piles with stainless steel ties (subject to future detail). This engineering solution has informed the landscape specifications adjacent to the northern /rear boundary and the applicant is satisfied that adequate soil (quantity and quality) is available to achieve the proposed landscape design.

Council's Development Engineer has reviewed the above-mentioned additional structural engineering details and considers it to be adequate. Recommended **Conditions A.3, C.5, C.6, D.8 & E.7** of consent are designed to safeguard the structural integrity of the wall via referencing the relevant engineering documents, requiring structural certification, requiring a dilapidation report in relation to the wall and a requirement for the provision of adequate structural support of adjoining land and buildings.

Council's Tree and Landscape Officer has raised no objection to the proposal in terms of landscaping potential adjacent to the subject northern boundary wall.

8.2. Statutory Declaration

The applicant has completed a statutory declaration that the site notice was erected and maintained during the notification period in accordance with the relevant provisions of Woollahra DCP 2015.

9. SEPP (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificates A262650 & 732469S committing to environmental sustainability measures. These requirements have been imposed by conditions as required by clause 97A of the *Environmental Planning & Assessment Regulation* 2000.

10. SEPP 55–REMEDICATION OF LAND

As required Under Clause 7 (1) (a) of SEPP 55-Remediation of Land, consideration has been given as to whether the land is contaminated. In the absence of any information indicating the potential contamination of the sites, further consideration of this issue is not warranted in this instance.

11. SREP (SYDNEY HARBOUR CATCHMENT) 2005 AND ACCOMPANYING DCP

The relevant provisions of this instrument and the accompanying DCP for SREP (Sydney Harbour Catchment) 2005 require Council to consider the visual and environmental impact that a development proposal will have upon Sydney Harbour and adjoining foreshore areas and the likely impact upon available views to and from Sydney Harbour.

It is considered that the proposal will be compatible with the scale and character of the local built environment, will not have any significant adverse visual impacts upon Sydney Harbour and adjoining foreshore areas and will not have any unreasonable adverse impacts upon views to or from Sydney Harbour beyond that associated with the approved development at 8 Queens Avenue (DA514/2011/4), subject to a reduced height of the proposed landscaping to the rear setback area as recommended by **Condition C.1b**.

12. DRAFT SEPP (COASTAL MANAGEMENT) 2016

The provisions of draft planning instrument that are relevant to the subject application involve managing development in the coastal zone and protecting the environmental assets of the coast. It is considered that the proposal will not have any significant adverse environmental impact upon the harbour coastal locality and therefore satisfactory with regard to the relevant provisions of the draft planning instrument.

13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

13.1. Part 1.2: Aims of Plan

The proposal, as conditioned, is considered to be consistent with the aims in Part 1.2(2) of Woollahra LEP 2014.

13.2. Land Use Table

The proposal relates to a dual occupancy use which is permissible and as conditioned, is considered to be consistent with the objectives of the R2 Low Density Residential zone.

13.3. Part 4.1A: Minimum Lot Sizes for a Dual Occupancies, Multi Dwelling Housing and Residential Flat Building

	Proposed	Control	Complies
Minimum Lot Size – Dual Occupancy	2939.4m ²	460m ² - Attached Dual Occupancy 930m ² - Detached Dual Occupancy	YES

Part 4.1A(2) specifies a minimum lot size of 460m² for an attached dual occupancy development and 930m² for a detached dual occupancy development. The proposal involves the consolidation of the existing two allotments and **Condition F.6** formalises this. The proposed consolidated sites are compliant with the provisions of Part 4.1A(2) of Woollahra LEP 2014.

13.4. Part 4.3: Height of Buildings

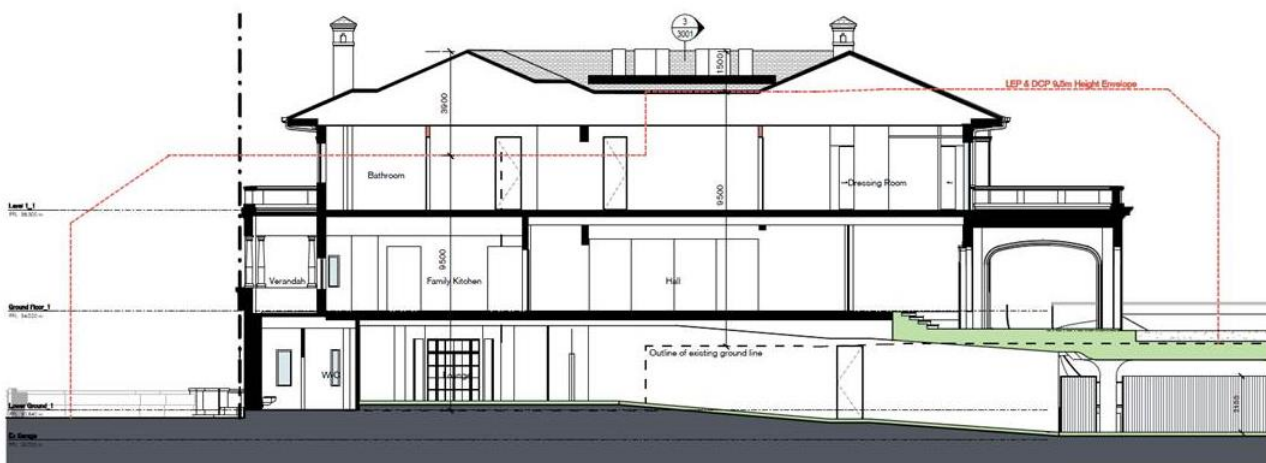
	Existing	Proposal	Control	Complies
Maximum Building Height (m)	13.4 (roof ridge)	13.5	9.5	NO*

*Clause 4.6 written request submitted by the applicant.

Part 4.3 limits development to a maximum height of 9.5m. The proposal involves a maximum height of 13.5m above existing ground level, a non-compliance of 4m (42%).

The non-compliant aspects of the proposal relate to replacement air-conditioning condensing units to the existing centrally located rooftop mechanical plant deck and internal and external alterations to the upper, southern section of the heritage listed dwelling-house at 6 Queens Avenue associated with the proposed conservation, restoration and adaption works. The subject non-compliant external alterations involve the replacement of existing windows and doors with new metal framed high performance glazing and the addition of a set of double doors to provide access to the western terrace from Bedroom 3 at Level 1.

The diagram below indicates the 9.5m height plane. The sections of the building envelope and roof profile of the existing-house located above Council's 9.5m height plane are not proposed to be increased or altered from that as existing.



Part 4.6 Assessment

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

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for the development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the secretary has been obtained.*

Written Request

Part 4.6(3) stipulates that a written request is required from the applicant that justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention.

The applicant has provided a written request which makes the case that compliance with the height standard is unreasonable and unnecessary as all relevant objectives/ matters for consideration are satisfied and that there are sufficient environmental planning grounds to justify contravening the development standard in terms of achieving the conservation, restoration and sympathetic adaption of the heritage listed existing dwelling-house at 6 Queens Avenue.

The full Clause 4.6 variation request is attached as **Annexure 6**.

It is considered that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Independent Assessment

Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6(1) are as follows:

- a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

It is considered that the subject non-compliant works are minor in scale and will not result in any significant adverse environmental impact including impacts upon adjoining properties or the public domain.

Accordingly, it is considered that flexibility in applying the height development standard is warranted in this instance and therefore the non-compliances are considered to be consistent with the objectives of Clause 4.6.

Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ established potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. The Court's recent decision in *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90 has altered the way the tests ought be applied, requiring justification beyond compliance with the objectives of the development standard and the zone. The relevant tests are considered below.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard

Objective (a) - To establish building heights that are consistent with the desired future character of the neighbourhood and Objective (b) - to establish a transition in scale between zones to protect local amenity

The non-compliant aspects of the proposal relate to replacement air-conditioning condensing units to the existing centrally located rooftop mechanical plant deck and internal and external alterations to the upper, southern section of the heritage listed dwelling-house at 6 Queens Avenue associated with conservation, restoration and adaption works. The subject non-compliant external alterations involve the replacement of existing windows and doors with new metal framed high performance glazing and the addition of a set of double doors to provide access to the western terrace from Bedroom 3.

The sections of the building envelope and roof profile of the existing-house located above Council's 9.5m height plane are not proposed to be increased or altered from that as existing.

The replacement of air-conditioning condensers to the existing centrally located rooftop mechanical plant deck will not be significantly visually discernible from external perspectives as the deck is surrounded by hipped roof forms on all four sides.

It is considered that the non-compliant aspects of the proposal are minor in nature, will be compatible with the scale and character of the local built environment, are consistent with the desired future character of the neighbourhood, will not result in any significant adverse environmental impact including impacts upon adjoining properties or the public domain (including the harbour and Queens

Avenue), whilst providing new air-conditioning condensers and improving the functioning of the first floor level via the provision of additional bedrooms, the provision of disabled access, the provision of access to the western terrace from Bedroom 3 and the installation of high-performance glazing that will reduce energy consumption.

It is therefore considered that the non-compliant elements of the proposal are consistent with Objectives (a) & (b).

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

The non-compliant aspects of the proposal will not result in any overshadowing to adjoining properties. Therefore the non-compliances are considered to be consistent with Objective (c).

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

It is considered that the non-compliant aspects of the proposal will not have any significant impact upon the amenity of adjoining properties in terms of views, privacy, overshadowing or visual intrusion. Therefore the non-compliances are considered to be consistent with Objective (d).

Objective (e) - To protect the amenity of the public domain by providing public views of the harbour and surrounding areas.

It is considered that the non-compliant aspects of the proposal will not have any significant impact upon public views. Therefore the non-compliances are considered to be consistent with Objective (e).

Test 2 - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

The underlying purpose of the development standard is to ensure that the scale of a building remains visually compatible with the context of the surrounding built environment and does not have any significant adverse impact upon the amenity of adjoining properties or the public domain. The non-compliant aspects of the proposal are considered to be satisfactory in this regard. Accordingly, compliance with the standard is considered to be unnecessary in this instance.

Test 3 - The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

It is considered that the subject non-compliant works are minor in scale and will not result in any significant adverse environmental impact including impacts upon adjoining properties or the public domain, whilst providing new air-conditioning condensers and improving the functioning of the first floor level via the provision of additional bedrooms, the provision of disabled access, the provision of access to the western terrace from Bedroom 3 and the installation of high-performance glazing that will reduce energy consumption. Accordingly, compliance with the standard is considered to be unreasonable in this instance.

There are sufficient environmental planning grounds to justify contravening the development standard

As discussed above, the non-compliant aspects of the proposal are considered to be satisfactory in terms of not having the potential for any significant adverse environmental impact whilst providing

new air-conditioning condensers and improving the functioning of the first floor level via the provision of additional bedrooms, the provision of disabled access, the provision of access to the western terrace from Bedroom 3 and the installation of high-performance glazing that will reduce energy consumption.

Accordingly, it is considered that there are sufficient environmental planning grounds to justify contravening the development standard in this instance.

Public interest

Clause 4.6(4)(a)(ii) stipulates Council is to be satisfied that:

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

As discussed above, it is considered that the non-compliant elements are consistent with the objectives of the development standard. They are also considered to be consistent with objectives of the R2 zone which state:

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

It is considered that the subject non-compliant works will be compatible with the adjoining residential development and surrounding context and to be consistent with the desired future character of the neighbourhood.

Accordingly, the variation of the height development standard in this instance is considered to be in the public interest.

Concurrence of the Director General

According to clause 64 of the Environmental Planning and Assessment Regulation (2000), where the Council's standard LEPs includes clause 4.6-Exceptions to Development Standards, the Director General's [Secretary's] concurrence can be assumed subject to the Council being notified by the Director General [Secretary] of such. On 9 May 2008 the Department of Planning issued a Planning Circular (no PS08 – 003) notifying councils that they may assume the Director General's [Secretary's] concurrence under environmental planning instruments that adopt clause 4.6(4)(b).

Conclusion

The height non-compliant aspects of the proposal are considered to be in the public interest and to be consistent with the objectives of the height development standard. Departure from the control is therefore supported.

13.5. Part 5.9: Preservation of Trees or Vegetation

Part 5.9(1) seeks to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation where there are works to any tree or other vegetation.

In this regard, Council's Tree & Landscape Officer's referral response states:

Located within the subject property are 12 trees and well established hedges along the southern and northern boundaries. From the information supplied it would appear that all existing trees and established hedges with the exception of 1 Kentia Palm are proposed for removal. The landscape value of the trees and hedges proposed for removal are however of moderate to low landscape significance. The proposal is considered to be satisfactory in terms of tree preservation subject to conditions.

The submitted landscape plan proposes the planting of advanced sized trees for hedging and 5 specimen trees. Submitted correspondence titled 6 & 8 Queens Ave, Vacluse Landscape DA submission, written by William Dangar, dated 16/11/2016 details the soil depth in the location of the proposed Jacaranda is to be 600mm. This will restrict the growth of the Jacaranda and may alleviate concerns from surrounding properties regarding the potential for the Jacaranda to blocking views. The limited soil depth in this instance is considered to be acceptable. Accordingly, the submitted landscape plan is considered to be satisfactory.

The proposal, as conditioned, is therefore considered to be acceptable with regard to Part 5.9 of the Woollahra LEP 2014.

13.6. Part 5.10: Heritage Conservation

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

The existing dwelling-house and front fencing at 6 Queens Avenue are heritage listed. Further, a number of heritage items are located in close proximity to the subject sites. In this regard, Council's Heritage Officer has provided the following heritage related assessment:

Significance of items in the vicinity

A number of heritage items are located in close proximity of the subject site. These include:

- *Former gatehouse to The Hermitage and interiors, front fencing, 3 sandstone gateposts at 20A Vacluse Road (Item No. 397);*
- *"The Hermitage"—house and interiors, grounds, gateposts and gates to Vacluse Road, inner gateposts, gates and fencing, stone works associated with adjacent Watercourse at 22 Vacluse Road (Item No. 398);*
- *Norfolk Island Pine, Hoop Pine, Bunya Pine, fencing to Vacluse Road at 22A Vacluse Road (Item No.399);*
- *Gardens formerly part of "The Hermitage" at 22D Vacluse Road (Item No.400); and*
- *2 Cook Pines, Norfolk Island Pine at 22E Vacluse Road (Item No.401)*

Assessment of heritage impacts

Given the site topography and context, it is considered that the proposal will not adversely affect the heritage items in close proximity to the subject site.

1. Significance of subject property

The site includes a local heritage item listed in Woollahra LEP 2014, being 'House and interiors, front fencing' (Item No. I390). The house was formerly known as Hartley Hope and Villa Igeia.

'Villa Igeia' is an exceptionally significant building through its aesthetic values and historical association as a rare and intact example of the work of the English architect Neville Hampson, the designer of 'Boomerang' at Elizabeth Bay. 6 Queens Avenue is an intact example of an Inter War Italian Renaissance Revival style of architecture, with influences from America, possibly from the architect Julia Morgan and her work at San Simeon for Randolph Hearst. The building is exceptionally aesthetically significant through its demonstration of international influences, externally expressed through the roof and external manner of detailing. This style of architectural design was rare in New South Wales during this period. "Villa Igeia" contains a high level of technical significance for its ability to demonstrate the manner and detailing of the architect Neville Hampson. The house has a strong association with the Grace family who made it a centre of Sydney social life and for its later ownership by Sir Peter Abels a prominent Australian.

Assessment of heritage impacts

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

- Clause 1(a) The development does conserve the heritage of Woollahra.*
- Clause 1(b) The impact upon the heritage significance of the item will be neutral.*
- Clause 4 This referral constitutes an assessment under this clause.*

6 Queens Avenue

Landscape works

The existing landscape works generally date from 2006 and 2009, when major changes to the landscaping, including new basement garage, substantially altered the original setting. As such, changes to the existing landscaped setting, including removal of the swimming pool, can be supported as they do not constitute heritage fabric.

External alterations

It is noted that very limited external alterations are proposed, mostly affecting existing openings at ground and first floor level. The proposal aims to replace existing steel openings with aluminium framed, high performance glazed units to increase energy efficiency and security. The aesthetic integrity of the house and its presentation will be retained and continue to be appreciated. Where aluminium framed windows are being installed, it is recommended that they match the existing steel frame profile.

Internal alterations

Original plans for this house are held at Woollahra Local Studies, with some documentation having been provided in the Heritage Impact Statement and Conservation Management Strategy. Changes mostly affect fabric graded as 'neutral' or 'intrusive', in accordance with the Significance Diagram and Schedule of Significant Elements outlined in the Section 5.4 of the Conservation Management Strategy.

A site inspection ascertained that the first floor level does not retain original fabric, including cornices, joinery and internal significant decorations, the house having been subject to extensive internal renovations in the last 10 years.

Where original walls are removed, these need to be interpreted through the use of portal frames, bulkheads and wall nibs in order to provide evidence of the original wall layout. Changes are mostly occurring at first floor level in the areas of the Master Bedroom 1 (including dressing room and master ensuite), Bedroom 4 (including Wardrobe and Ensuite), Bedroom 6 and 5 with adjacent bathroom and Master Bedroom 3 (including Master Ensuite and Master Robe 3). A condition of consent is recommended accordingly.

The ground floor level retains most of the original wall layout and minimum alterations are proposed. The proposed reinstatement of a fireplace is proposed in the main living area, which is considered a positive heritage outcome.

8 Queens Avenue

Demolition of 8 Queens Avenue, site amalgamation and new dwelling

The existing 1955 dwelling-house does not have any heritage significance or architectural merit. Its removal is therefore supported on heritage grounds.

It is noted that 8 Queens Avenue was originally part of the grounds of 6 Queens Avenue. The proposed amalgamation of the 2 sites is therefore supported as it will partially reinstate the large original grounds of Hartley Hope.

The design of the new dwelling at 8 Queens Avenue is declaredly contemporary in terms of built form, materials and finishes presenting a 2 storey form to the street. A buffer zone created by landscaped elements and the driveway will occur between the 2 buildings. Overall the new dwelling is considered to be acceptable as it will not affect the visual and physical curtilage of Villa Igiea.

Recommendation

The application is considered to be satisfactory subject to the following conditions:

- 1. Where new metal framed windows are being installed to the heritage item 'House and interiors, front fencing' (Item No. I390), it is recommended that they match the existing steel frame profile.*
- 2. Where original walls are to be removed at First Floor level of the heritage item 'House and interiors, front fencing' (Item No. I390), these need to be interpreted through the use of*

portal frames, bulkheads or wall nibs in order to provide evidence of the original wall layout. This is limited to the areas of the Master Bedroom 1 (including dressing room and master ensuite), Bedroom 4 (including Wardrobe and Ensuite), Bedroom 6 and 5 with adjacent Bathroom and Master Bedroom 3 (including Master Ensuite and Master Robe 3).

- 3. All persons responsible for the management, maintenance and construction works to the site need to be familiar with the significance of the heritage item 'House and interiors, front fencing' (Item No. I390) and the Conservation Management Strategy by Urbis, dated 15 November 2016.*
- 4. All conservation works to be undertaken to the heritage item 'House and interiors, front fencing' (Item No. I390) need to be in accordance with the Conservation Works Schedule outlined in Appendix A of the Conservation Management Strategy by Urbis, dated 15 November 2016.*
- 5. A full archival record of the building and landscape elements to be altered is to be submitted, to the satisfaction of Council's heritage officer, prior to the commencement of any work and prior to the issue of a Construction Certificate.*

The above-mentioned conditions have been included as **Conditions B.7, B.8, C.1d, C.1e and E.1** of the recommended development consent. The proposal, as conditioned, is considered to be satisfactory with regard to the provisions of Part 5.10 of Woollahra LEP 2014.

13.7. Part 6.1: Acid Sulfate Soils

Part 6.1 requires Council to consider any potential acid sulfate soil affectation so that it does not disturb, expose or drain acid sulfate soils and cause environmental damage. The subject site is within a Class 5 area as specified in the Acid Sulfate Soils Map. However, the subject works will not lower the water table below 1m AHD on any land within 500m of a Class 1, 2 and 3 land classifications. Accordingly, the proposal is considered to be acceptable with regard to Part 6.1.

13.8. Part 6.2: Earthworks

Part 6.2(1) requires Council to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. In deciding whether to grant consent for earthworks, the consent authority must consider the following matters:

- (a) The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development*
- (b) The effect of the development on the likely future use or redevelopment of the land*
- (c) The quality of the fill or the soil to be excavated, or both*
- (d) The effect of the development on the existing and likely amenity of adjoining properties*
- (e) The source of any fill material and the destination of any excavated material*
- (f) The likelihood of disturbing relics*
- (g) The proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area*
- (h) Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The proposal involves approximately 2843m³ of excavation, equivalent to approximately 355 truckloads assuming 8m³ per truck on average (as advised by Council's engineers). Council's Traffic Engineer has provided the following comments in relation to construction management:

Council's Traffic Section has undertaken an assessment on the revised Traffic Management Plan for Construction Works prepared by TEF Consulting. Most of the preliminary concerns raised in Council's memo dated 10 February 2016 have been addressed. With respect to the Traffic Control Plan (TCP) submitted as part of the document, there may be a need for an additional traffic controller in Vacluse Road to ensure that southbound traffic in Vacluse Road approaching Queens Avenue can travel safely while approaching construction vehicles wishing to turn right out of Queens Avenue.

A Construction Management Plan (CMP) is required by **Condition D.11** of the recommended development consent.

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

A Geotechnical Report, referenced PSM3065-002L REV1, prepared by Pells Sullivan Meynink, dated 16 November 2016, further Geotechnical Comments, referenced PSM3065-003L, prepared by Pells Sullivan Meynink Engineering Consultants, dated 8 March 2017 and Statement regarding Council Queries (geotechnical), referenced 161227, prepared by Taylor Thomson Whitting, dated 14 July 2017 has been submitted in support of the application and is considered adequate.

The report identified that the subsurface conditions as:

- a) Fill to depth of 0.2m.*
- b) Natural sand to depth of 0.4m.*
- c) Sandstone encountered at depths of 0.8m*
- d) Groundwater appeared not to be an issue.*
- e) No ground anchors proposed.*

The report made comments and recommendations on the following:

- Excavation conditions*
- Site classifications*
- Permanent and temporary batters*
- Excavation support*
- Foundations*

Council's Technical Services has no objection to the proposed excavation on technical grounds, subject to conditions.

Subject to recommended **Condition C.1f** reducing the extent of the proposed excavation and the imposition of conditions requiring the following, it is considered that potential adverse environmental impacts related to the proposed excavation will be minimised as much as is practically possible:

- adequate dust mitigation;
- the appropriate disposal of excavated material;

- limiting the times and duration of machine excavation;
- the maintenance of a safe pedestrian route;
- the structural support of neighbouring buildings and public land during excavation;
- the requirement for a Construction Management Plan and Works Zone;
- the preparation of dilapidation reports in relation to adjoining development; and
- the implementation of hydrogeological / geotechnical and vibration monitoring programs requiring the adequate supervision/ monitoring of the excavation process by a qualified and practicing geotechnical engineer.

Council's Tree and Landscape Officer has raised no objection to the proposed excavation in terms of impacts upon existing significant trees, subject to conditions.

Council's Heritage Officer has raised no objection to the proposal on the basis of heritage related impacts including disturbance of relics.

The proposal, as conditioned, is considered to be acceptable with regard to the provisions of Part 6.2 of the Woollahra LEP 2014.

13.9. Part 6.3: Flood Planning

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

The subject sites are not flood prone and accordingly, the proposal is considered to be acceptable with regard to the provisions of Part 6.3 of Woollahra LEP 2014.

14. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

14.1. Chapter B1: Vacluse West Residential Precinct

The general objectives of the residential precinct controls are:

- O1 To ensure development reflects the desired future character of the precinct.*
- O2 To preserve the significant features of individual precincts which contribute to their unique character.*
- O3 To ensure that the design and siting of development suitably responds to the surrounding built form and natural features.*
- O4 To limit impacts on the amenity of adjoining and adjacent development.*
- O5 To ensure the preservation of significant view corridors and ridgelines.*
- O6 To retain and reinforce tree canopies and landscape qualities.*
- O7 To ensure that streetscape and scenic quality is preserved.*

The desired future character objectives of the Vacluse West precinct are as follows:

- O1 To respect and enhance the streetscape character and key elements of the precinct.*
- O2 To retain the scenic qualities provided by the dramatic topography and natural vegetation that provide an attractive setting on Sydney Harbour.*
- O3 To maintain the evolution of residential building styles through the introduction of good contemporary buildings incorporating modulation and a varied palette of materials.*

- O4 To minimise building bulk and scale of three storey development by designing development to generally present as a two storey form to the street.*
- O5 To design and site buildings to respond to the topography and minimise cut and fill.*
- O6 To protect important views from the public spaces of the precinct to the harbour and the city skyline including view corridors between buildings.*
- O7 To reinforce the landscape setting and maintain the existing tree canopy.*
- O8 To retain and reinforce the green setting of mature street trees, private trees and garden plantings.*

Streetscape character and key elements of the Vaucuse West precinct:

Development respects and enhances the existing elements of the neighbourhood character that contribute to the precinct including:

- a) the relationship of the precinct to the harbour;*
- b) the rich mixture of architectural styles, and the emphasis on their connection to the landform;*
- c) buildings set within highly visible gardens;*
- d) buildings addressing the street; and*
- e) the harbour and iconic views available from the streets of the precinct, including view corridors between buildings.*

The proposed alterations and additions to the existing heritage listed dwelling-house at 6 Queens Avenue will not significantly alter the form or character of the existing building and are considered to be satisfactory with regard to the above-mentioned objectives.

The proposed new dwelling at 8 Queens Avenue is considered to consist of an adequately modulated, terraced and recessive form, of a contemporary design, incorporating adequate landscaping elements and an adequately varied palette of materials so as to be compatible with the scale and character of the local build environment such that the visual amenity of the harbour and locality will not be significantly adversely affected. Accordingly, the proposal, as conditioned, is considered to be satisfactory with regard to the above-mentioned objectives.

14.2. Chapter B3: General Development Controls

The objectives of the general development controls are:

- O1 To facilitate housing in a way that reflects desired future character objectives for the residential precincts and neighbourhood heritage conservation areas.*
- O2 To ensure that the form and scale of development is not excessive and maintains the continuity of building forms.*
- O3 To conserve the natural, built and cultural significance of identified heritage items and heritage conservation areas.*
- O4 To facilitate flexibility and innovation in design while ensuring sympathetic and well mannered development.*
- O5 To ensure that development establishes a good relationship to the streetscape context.*
- O6 To ensure that development responds to the site topography and minimises excessive excavation.*
- O7 To minimise the negative impacts of development on the amenity of adjoining and neighbouring properties.*
- O8 To promote housing that achieves principles of ecologically sustainable development.*

Part B3.2: Building Envelope

Site Area: 2939.4m ²	Proposal	Control	Complies
Front Setback (south-east)	0.8-22	Approx. 2.3-5.5m	NO*
Front Setback (Non articulated length)	Max 12m	If >6m; an additional 0.9m for a length of 3m	YES
Side Boundary Setbacks (east)	1.155-2m	8.4-9.9m	NO
Side Boundary Setbacks (east) (Non articulated length)	Max. 14m	If >12m; an additional 1.5m for a length of 2.4m	NO
Side Boundary Setbacks (west)	0-14m	5.5-10m	NO*
Side Boundary Setbacks (west) (Non articulated length)	Max. 11m	If >12m; an additional 1.5m for a length of 2.4m	YES
Side Boundary Setbacks (south)	1.6-17.2	Approx. 5.5m	NO*
Side Boundary Setbacks (south) (Non articulated length)	Max. 9m	If >12m; an additional 1.5m for a length of 2.4m	YES
Rear (Northern) Boundary Setback	2.4-25	Approx. 15.3m	NO
Maximum Wall Height/ Inclined Plane From Wall Height	7.6m wall height and flat roof	7.2m/45° above 7.2m	NO

* Involves an existing non-compliance in relation to 6 Queens Avenue

Part 3.2.2: Front Setback

C1 states that the front setback is to be the average of the three most typical setbacks of the four closest residential properties (excluding garages and car ports), approximately 2.3-5.5m in this instance.

C2 requires a maximum unarticulated building width of 6m, beyond which the building is to be setback a further 0.9m for at least 3m of the frontage.

Part 3.2.3: Side Setbacks

C2 requires minimum side boundary setbacks of approximately 5.5-10m in this instance.

C5 requires a maximum unarticulated wall length of 12m to the side elevation, beyond which the side setback is increased by at least 1.5m for a minimum distance of 2.4m.

Part 3.2.4: Rear Setback

The required rear setback under C2 is approximately 15m in this instance.

Part 3.2.5: Wall Height and Inclined Plane

C1 specifies a maximum external wall height of 7.2m with an inclined plane of 45 degrees above this height. Roof eaves can protrude 450mm from the setback of the inclined plane.

Assessment of non-compliances/conclusion

Front setback

The objectives of the front boundary setback control are:

- O1 To reinforce the existing streetscape and character of the location.*
- O2 To provide consistent front setbacks in each street.*
- O3 To provide for landscaped area and deep soil planting forward of the building.*

The proposed alterations and additions to the existing heritage listed dwelling-house at 6 Queens Avenue maintain the existing front boundary setback. As such, no objection is raised in relation to the technical non-compliance with Council's front setback requirement.

The front elevation of the ground floor level of the proposed new building containing the bin storage area and service lift with clerestory above extends to approximately 2m of the Queens Avenue alignment and is non-compliant with Council setback requirement of approximately 2.3m.

No objection is raised in relation to this minor extent of non-compliance on the basis that the proposed front setback is consistent with existing dwelling-house development within the streetscape at 4 & 6 Queens Avenue and the substantial garage/ loft structure at 18 Vacluse Road. Further, the front elevation of this structure is considered to be adequately modulated and will be adequately screened by landscaping to the front setback area such that the visual amenity of the locality will not be significantly adversely affected.

Eastern side boundary setback/ articulation

The objectives of the side boundary setback control are:

- O1 To protect the acoustic and visual privacy of residents on adjoining properties.*
- O2 To avoid an unreasonable sense of enclosure and to facilitate an appropriate separation between buildings.*
- O3 To facilitate solar access to habitable windows of adjoining properties.*
- O4 To facilitate views between buildings.*
- O5 To provide opportunities for screen planting.*
- O6 To allow external access between the front and rear of the site.*

The proposed 1.55m setback at ground floor level and the proposed 2m setback at first floor level of the proposed new dwelling at 8 Queens Avenue are non-compliant with Council's requirement of 8.4-9.9m. Further, the eastern elevation at ground floor level involves a maximum unarticulated length of 14m which is non-compliant with Council's maximum length of 12m.

It should be noted that the approval of Woollahra Development Control Plan 2015 (Amendment No 2) on 10 April 2017 included the amendment of the side boundary setback requirement from 15% of a site width greater than 23m (8.4-9.9m in this instance) to a flat requirement of 3.4m for sites with frontages greater than 23m in length. However, due to savings provisions, this amendment does not apply to the subject application.

It should also be noted that the approval of DA514/2011/4 involved an eastern side boundary setback of 2.5m at first floor level. The existing eastern setback at ground floor level is 1.155m.

No objection is raised in relation to the above-mentioned non-compliance at ground floor level on the basis that that it is consistent with the existing setback distance, the majority of the eastern elevation

at ground floor level is adjacent to the driveway to the adjoining property to the east (10 Queens Avenue) and it will be adequately screened by landscaping to the eastern setback area such that the visual amenity of the adjoining properties and the streetscape will not be significantly adversely affected.

No objection is raised in relation to the above-mentioned non-compliance at first floor level on the basis that it is adjacent to the secondary, west-facing window to the master bedroom whereas the primary outlook from the master bedroom is towards the north-west from the main window to the northern elevation which will not be adversely visually impacted upon.

Further, it is considered that the non-compliances will not result in any significant overshadowing, loss of views or loss of privacy to the adjoining property beyond that associated with the approved development DA514/2011/4. With regard to potential visual privacy impacts upon the adjoining property, it is considered that adequate privacy screening is proposed to the eastern side elevation.

Western side boundary setback

The proposed alterations and additions to the existing heritage listed dwelling-house at 6 Queens Avenue maintain the existing western side boundary setback. As such, no objection is raised in relation to the technical non-compliance with Council's western side boundary setback requirement.

Southern side boundary setback

The proposed alterations and additions to the existing heritage listed dwelling-house at 6 Queens Avenue maintain the existing southern side boundary setback. As such, no objection is raised in relation to the technical non-compliance with Council's southern side boundary setback requirement.

Northern (rear) boundary setback

The objectives of the rear boundary setback control are:

- O1 To provide private open space and landscaped areas at the rear of buildings.*
- O2 To provide acoustic and visual privacy to adjoining and adjacent buildings.*
- O3 To avoid an unreasonable sense of enclosure.*
- O4 To provide separation between buildings to facilitate solar access to private open space.*
- O5 To protect vegetation of landscape value and provide for landscaped area and deep soil planting.*
- O6 To contribute to a consolidated open space network with adjoining properties to improve natural drainage and support local habitat.*

The proposed rear setbacks of 2.4-8.6m in relation to the proposed new dwelling at 8 Queens Avenue are non-compliant with Council's requirement of approximately 15.3m. No objection is raised in relation to this non-compliance on the following grounds:

- the proposed rear setback is consistent with the approved development DA514/2011/4 which was supported on the basis of the established pattern of existing development pertaining to 8 & 10 Queens Avenue and to mitigate adverse impacts upon iconic views to a nearby property to the east, 18 Vacluse Road;
- the northern (rear) section of the site is elevated substantially (approximately 3m) above the adjoining property to the north (22B Vacluse Road) and it is considered that no significant

adverse amenity impacts upon the adjoining property is envisaged due to the primary orientation of the lower adjoining dwelling-house towards the north and west away from the subject rear elevation, the provision of adequate privacy screening to the rear elevation and the provision of adequate landscaping adjacent to the northern setback area notwithstanding the reduced landscaping height as per recommended **Condition C.1b**; and

- it is considered that the non-compliances will not result in any significant overshadowing, loss of views, adverse visual impacts or loss of privacy to adjoining properties beyond that associated with the approved development DA514/2011/4.

Wall Height and Inclined Plane

The objectives of the wall height and inclined plane control are:

- O1 To limit the bulk, scale and visual impact of buildings as viewed from the street and from adjoining properties.*
- O2 To limit overshadowing of adjoining properties across side boundaries.*
- O3 To limit overshadowing to south facing rear yards.*

C1 specifies a maximum external wall height of 7.2m with an inclined plane of 45 degrees above this height. Roof eaves can protrude 450mm from the setback of the inclined plane.

The proposed new dwelling at 8 Queens Avenue involves a maximum external wall height of approximately 7.6m and a flat roof.

No objection is raised in relation to this minor area of non-compliance on the following basis:

- the proposed first floor level is adequately recessive relative to the ground floor level below, such that the visual amenity of adjoining properties and the public domain will not be significantly compromised; and
- the non-compliance will not result in any significant overshadowing impacts upon adjoining properties and solar access will be maintained to adjoining properties in accordance with Council's requirements.

The proposal is considered to be acceptable with regard to the building envelope controls and objectives under Part B3.2 of Woollahra DCP 2015.

Part B3.3: Floorplate Area

Site Area: 2939.4m ²	Proposed	Control	Complies
Maximum Floor Plate Area	Approx.1817m ²	Approx. 1855m ²	YES

C1 limits the floorplate area to a maximum of 165% of the buildable area; approximately 1855m² in this instance.

The proposal involves a total floorplate area of approximately 1817m² which complies with Council's control. The proposal is considered to be acceptable with regard to the floorplate control under Part B3.3 of Woollahra DCP 2015.

Part B3.4: Excavation

Site Area: 2939.4m ²	Proposed	Control	Complies
Maximum Volume of Excavation	Approx.2843m ³	638m ³	NO
Subsurface Wall Setbacks	1.15-5.8m	2.3-15.3m	NO

C1 limits the general volume of excavation to 634m³ based on the subject site area. Additional excavation is permitted by C4 to achieve a compliant amount of parking (2 car spaces per dwelling) and any necessary associated manoeuvring area and 20m³ for storage per dwelling.

C6 requires the setbacks of subsurface walls to comply with the above-ground setback requirements.

Assessment of non-compliances/ conclusion

The objectives of the excavation controls are:

- O1 To allow buildings to be designed and sited to relate to the topography.*
- O2 To minimise excavation.*
- O3 To ensure the cumulative impacts of excavation do not adversely impact land stabilisation, ground water flows and vegetation.*
- O4 To minimise structural risks to adjoining structures.*
- O5 To minimise noise, vibration, dust and other amenity impacts to adjoining and adjacent properties.*

The proposal involves approximately 2843m³ of excavation, a non-compliance of approximately 2205m³ with Council's volumetric excavation control of 638m³. The proposed excavation occurs within approximately 1.15m of the eastern side boundary, 6m from the western side boundary, 2m from the front boundary and 5.8m from the rear boundary which is non-compliant with Council's boundary setback requirements of 2.3-15.3m.

It should be noted that the approval of Woollahra Development Control Plan 2015 (Amendment No 2) on 10 April 2017 included the amendment of the side boundary setback requirement from 15% of a site width greater than 23m (8.4-9.9m in this instance) to a flat requirement of 3.4m for sites with frontages greater than 23m in length. However, due to savings provisions, this amendment does not apply to the subject application.

The subject site has an area of 2939.4m² and contains a substantial 6 bedroom heritage item 'Villa Igeia' and proposes a further 8 bedroom dwelling. Council's volumetric excavation control permits excavation to comply with the maximum rates specified under Part E.1 of Woollahra DCP 2015. This equates to 4 car parking spaces.

Objective O2 of section E1.1.3 of Chapter E1 - Parking and Access of Woollahra DCP 2015 aims to ensure that development makes adequate provision off-street for the car parking and servicing needs of its occupants and uses, including residents, employees, visitors and deliveries. Given that the subject site is approximately 4 times larger than surrounding sites, it is considered reasonable to expect that the subject site will result in a higher car parking generation rate.

It is noted that the existing covered car parking at the subject site provides 7 car spaces for 6 Queens Avenue (6 within the lower ground floor level and 1 under the entry portico) and 1 car space for 8

Queens Avenue, a total of 8 car spaces. The subject development proposes 11 covered car spaces (10 within the lower ground floor level and 1 under the entry portico).

To ensure the proposal does not place additional pressure on demand for on-street car parking, it is recommended that the existing car parking provision can be retained for the heritage item '*Villa Igeia*' (7 car spaces) plus one additional car space for the new dwelling (2 car spaces), a total of 9 car spaces. The provision of 2 additional car spaces is not supported due to the significant non-compliance with Council's volume of excavation control. Accordingly, recommended **Condition C.1f** requires the deletion of the lower ground floor level tandem garage.

Council's volumetric excavation control permits excavation for storage at a rate of 20m³ per dwelling. The proposed level of basement storage exceeds 40m³ but is considered to be commensurate with the size of the subject site.

The remaining non-compliant excavation can be attributed to the extension of the lower ground floor of the heritage item '*Villa Igeia*' and the lower ground floor level of the proposed eastern dwelling. No objection is raised in relation to the proposed extension to the lower ground floor level of the heritage item, as this area is partially located within the subfloor area of the existing building. Furthermore, the proposal enables restoration and adaptive works which will improve the function of the heritage item without adversely impacting upon its heritage significance.

However, it is considered that there is no special justification for the non-compliant excavation that results from the provision of the habitable rooms to the lower ground floor level to the proposed eastern dwelling. This is considered to be contrary to the above-mentioned objective O2 of section B3.4 which is to minimise excavation. Accordingly, recommended **Condition C.1f** requires the deletion of the rumpus room and Bedrooms 1-5, their associated ensuites and the adjacent northern setback area wall from the lower ground floor level. Retaining walls and balustrades are permitted as necessary due to the resultant change in levels.

Recommended **Condition C.1f** will reduce the proposed volume of excavation by 168.5m³ in relation to the tandem garage and 787.5m³ in relation to the northern section of the lower ground floor level to the new dwelling, a total of approximately 956m³ which will reduce the non-compliance from 2205m³ down to 1249m³.

Subject to **Condition C.1f**, the residual excavation is considered to be satisfactory with regard to the above-mentioned objectives of section B3.4 for the following reasons:

- Council's Traffic and Development Engineers have raised no objection to the extent of excavation in terms of geotechnical/hydrogeological issues and traffic impacts upon the local road network associated with transporting the excavated material, subject to the imposition of conditions requiring the following:
 - adequate dust mitigation;
 - the appropriate disposal of excavated material;
 - limiting the times and duration of machine excavation;
 - the maintenance of a safe pedestrian route;
 - the structural support of neighbouring buildings and public land during excavation;
 - the requirement for a Construction Management Plan and Works Zone;
 - the preparation of dilapidation reports in relation to adjoining development; and

- the implementation of hydrogeological / geotechnical and vibration monitoring programs requiring the adequate supervision/ monitoring of the excavation process by a qualified and practicing geotechnical engineer;
- The proposal satisfies the energy efficiency requirements of SEPP (Building Sustainability Index: BASIX) 2004; and
- Council's Tree and Landscape Officer has raised no objection to the proposed excavation in terms of impacts upon existing significant trees, subject to conditions;

Subject to **Condition C.1f**, the residual excavation is considered to be acceptable in this instance for the reasons outlined above and due to the absence of any significant adverse environmental impacts, including impacts upon existing landscaping, impacts upon the potential to provide new landscaping and geotechnical/hydrogeological impacts subject to conditions.

The proposal, as conditioned, is considered to be acceptable with regard to the provisions of Part B3.4 of Woollahra DCP 2015.

Part B3.5: Built Form and Context

Site Area: 2939.4m ²	Proposed	Control	Complies
Colour Scheme	Unobtrusive	Unobtrusive	YES
Roof Materials	Non-reflective	Non-reflective	YES
Casual Surveillance – Windows Facing Street/Public Area	>1	One	YES
Solar Access to Open Space of Adjacent Properties	>50% for 2 hours on 21 June	50% for 2 hours on 21 June	YES
Solar Access to Nth Facing Windows to Upper-Level Habitable Rooms	>3 hours on 21 June	3 hours on 21 June	YES
Setback of Bedroom Windows from Streets/Parking of Other Dwellings	>3m	3m	YES
Unscreened Sightline Distances of Habitable Room Windows to Adjacent Dwellings	>9	9m	YES
Unscreened Sightline Distances of Roof Terraces/Upper Level Decks from Open Space/Habitable Room Windows of Adjoining Properties	>12m	12m	YES

Part 3.5.1: Streetscape Character

C1 requires consistency with the desired future character of the precinct.

C2 requires the retention of mature or significant trees.

C3 requires development to step down the slope of the site. C4 does not permit bright or obtrusive colour schemes.

C5 requires that where the predominant form of development in a heritage conservation area is of pitched roofs, that the proposed development must match this form.

C6 requires non reflective roof materials.

C7 requires at least one habitable room window overlooking the street.

Assessment/Conclusion

The proposed alterations and additions to the existing heritage listed dwelling-house at 6 Queens Avenue will not significantly alter the form or character of the existing building and are considered to be satisfactory with regard to the above-mentioned objectives.

The proposed new dwelling at 8 Queens Avenue is considered to consist of an adequately modulated, terraced and recessive form, of a contemporary design, incorporating adequate landscaping elements and an adequately varied palette of materials so as to be compatible with the scale and character of the local built environment, such that the visual amenity of the harbour and locality will not be significantly adversely affected.

Accordingly, the proposal is considered to be acceptable with regard to the provisions of Part B.3.5.1 of Woollahra DCP 2015.

Part 3.5.2: Overshadowing

C1(a) stipulates that sunlight is provided to at least 50% of the main ground level private open space to adjoining properties for a minimum of 2 hours between 9am and 3pm on June 21. Where existing overshadowing is greater than this, sunlight is not to be further reduced.

C1(b) states that north-facing windows to upper-level habitable rooms of neighbouring dwellings have solar access maintained for at least 3 hours to a portion of their surface during the same period.

C2 acknowledges that a departure from C1 may be unavoidable, subject to the proposed development complying with all setback controls.

Assessment/ Conclusion

The proposal complies with Council's solar access controls and the proposal is considered to be acceptable with regard to the solar access provisions in Part B.3.5.2 of Woollahra DCP 2015.

Part 3.5.3: Public and Private Views

C1 and C2 require the retention of public views and vistas, including along streets.

For properties on the low side of the street, C3 requires development to comprise breaks in the building, fencing and car parking as well as transparent panels at the side boundary in order to retain views.

C4 seeks to avoid flat roofs with vents and plant on the low side of the street.

C5 requires view sharing between properties. Specifically, C6 requires development to step down the site, C7 requires an appropriately designed roof & C8 requires that roof terraces be uncovered.

C9-C10 requires that plantings must consider the retention of views and should not be used to block views.

Assessment/Conclusion

No significant obstruction of public views is envisaged as a result of the proposal.

The owners of 10 Queens Avenue and 18 Vacluse Road have objected to the proposed development on the basis of view loss. In assessing the reasonableness or otherwise of the degree of view loss, this report has had regard to the case law established by *Tenacity Consulting v Warringah (2004) NSWLEC 140* which has established a four step assessment of view sharing. The steps are as follows:

1. The assessment of the views affected

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

10 Queens Avenue

The views affected by the proposal are of Sydney Harbour and adjoining foreshore areas, Clark Island, the Sydney Harbour Bridge, city skyline, the Sydney Opera House and the North Sydney skyline.

18 Vacluse Road

The views affected by the proposal are of Sydney Harbour and adjoining foreshore areas.

2. 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.

10 Queens Avenue

The affected views are obtained from ground floor level living rooms and rear terrace and a first floor level master bedroom across a side boundary, predominantly from a standing position.

18 Vacluse Road

The affected views are obtained from a ground floor level living rooms and rear terrace and first floor level bedrooms across a side boundary, predominantly from a standing position.

3. 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.

10 Queens Avenue

The images below are from the ground floor level lounge room - standing position.

Existing view



Proposed (green) and approved DA514/2011/4 (red outline)



The images below are from the ground floor level family room - standing position.

Existing view



Proposed (green) and approved DA514/2011/4 (red outline)



The images below are from the ground floor level rear terrace - standing position.

Existing view

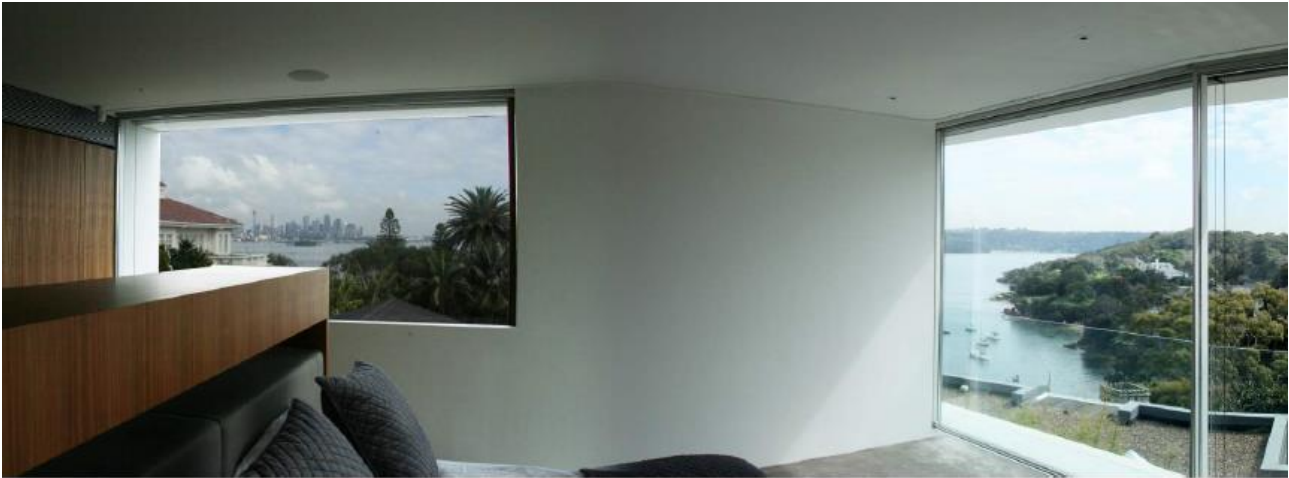


Proposed (green) and approved DA514/2011/4 (red outline)



The images below are from the first floor level master bedroom - standing position.

Existing view



Proposed (green) and approved (red outline)



The image below is from the first floor level sitting room - standing position. The view from this room is unaffected.



Whilst the proposal will partially obstruct harbour, foreshore, city skyline and North Sydney skyline views and fully obstruct iconic views of the Opera House and Clark Island, the majority of the impact

is upon the west-facing master bedroom window across the western side boundary. Expansive views will be maintained from both the ground and first floor levels of the harbour, foreshore, city skyline, North Sydney skyline, Sydney Harbour Bridge and Shark Island. Qualitatively, it is considered that the proposal would have a moderate impact upon views from this property overall.

18 Vaocluse Road

The images below are from the southern section of the ground floor level rear terrace - standing position.

Existing view



Proposed (green) and approved (red outline)



The images below are from the northern section of the ground floor level rear terrace - standing position.

Existing view



Proposed (green) and approved (red outline)



The images below are from the first floor level master bedroom - standing position.

Existing view



Proposed (green) and approved (red outline)



The images below are from a first floor level secondary bedroom - standing position.

Existing view



Proposed (green) and approved (red outline)



Whilst the proposal will completely obstruct harbour and foreshore views from the ground floor level, the affected views are across a side boundary and the impact is considered to be inevitable.

Whilst the proposal will partially obstruct harbour views from the first floor level, substantial harbour views will be maintained and views of the harbour foreshore, Sydney Harbour Bridge, Opera House, Shark Island and North Sydney skyline will be unaffected.

Qualitatively, it is considered that the proposal would have a moderate impact upon views from this property overall.

4. 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.

Whilst a substantial proportion of the above-mentioned view impacts can be attributed to an approximate 8m rear setback non-compliance, the proposed rear setback is consistent with the approved development DA514/2011/4 which was supported on the basis of the established pattern of existing development pertaining to 8 & 10 Queens Avenue and to mitigate adverse impacts upon iconic views to a nearby property to the east, 18 Vacluse Road, as indicated in the image below.

The image below indicates a complying building envelope



On the basis that development consent DA514/2011 granted on 5 May 2014 remains valid, it is considered appropriate to assess the reasonableness of the impact of the subject proposal upon the views of adjoining properties based upon a comparative analysis with the modified consent DA514/2011/4.

The extent of view loss to the affected adjoining properties (18 Vacluse Road and 10 Queens Avenue) associated with the proposed new dwelling at 8 Queens Avenue is considered to be

reasonable on the basis that it will be less than that associated with the approved building envelope DA514/2011/4 and would result in a lesser impact upon iconic views from 18 Vacluse Road than would a compliant building envelope scheme. It should be noted that the proposed new dwelling complies with Council's 9.5m height development standard and that the entire proposal complies with Council's floorplate DCP control.

With regard to potential view impacts associated with the proposed landscaping, concern is raised that a row of 11 x 10m high (hedged) above the proposed excavated finished ground level Magnolia grandiflora 'Exmouth' trees in 400 litre pots at planting proposed adjacent to the eastern 30m of the northern (rear) boundary would result in the substantial and unreasonable obstruction of iconic views from 10 Queens Avenue. Accordingly, it is recommended that an alternative species of landscaping to the rear setback area be required that will not exceed RL36 (see **Condition C.1b**). This equates to a level of approximately 6m above the proposed excavated finished ground level and approximately 3m above the section of the existing ground level adjacent to the northern elevation of the proposed new dwelling that is required to be retained by **Condition C.1f**. This is considered to be satisfactory in terms of providing adequate screening.

Subject to this requirement, the landscaping plan is considered to be satisfactory in terms of potential view impacts. Whilst the proposed centrally located Jacaranda with a specified mature height of 8m would obscure the retained glimpse of the Sydney Harbour Bridge from the northern section of the ground floor level of 18 Vacluse Road, being approximately equal to the top of the green shaded proposed building envelope indicated in the image below, Council's Tree and Landscape Officer has stated:

Submitted correspondence by the project arborist details the soil depth in the location of the proposed Jacaranda will be 600mm. This will restrict the growth of the Jacaranda and may alleviate concerns from surrounding properties regarding the potential for the Jacaranda to blocking views.

Regardless, the subject glimpse of the Sydney Harbour Bridge would be vulnerable to obstruction by the growth of existing landscaping as indicated in the photograph below.



Conclusion

The proposal, as conditioned, is considered to be acceptable with regard to the provisions of Part B3.5.3 of Woollahra DCP 2015.

Part B3.5.4: Acoustic and Visual Privacy

C1 requires adequate acoustic separation and privacy between dwellings.

C2 aims to separate bedrooms, by way of barriers or distance, from on-site noise sources such as active recreation areas, car parking area, vehicle access ways and service equipment areas.

C3 states that electrical, mechanical, hydraulic and plant equipment are to be suitably housed so as to not create an 'offensive noise', either within or at the boundaries of any property at any time of the day.

B3.5.4 offers the following additional criteria with respect to ensuring adequate acoustic privacy:

- a) Ensuring that bedrooms of one dwelling do not share walls with the habitable rooms (excluding bedrooms) or parking areas of an adjacent dwelling
- b) Locating bedroom windows at least 3m from streets, shared driveways and parking areas

C4 states that there should not be any sightlines from a habitable room window to a habitable room window in an adjoining property within 9m. This can be achieved via window location, layout and separation, screens or translucent glazing to 1.5m sill height.

C7 requires that balconies, terraces, decks and roof terraces are suitably screened to prevent direct views into habitable rooms or private open space of adjoining and adjacent dwellings.

C5 states that windows to bathrooms, toilets, laundries and storage rooms must be fitted with obscure glazing if there are views to or from neighbouring properties.

C6 requires that screening devices consider architectural design solutions that contribute to the architectural design of the building, comply with setback controls and retain views.

C9 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.

C10 requires the trafficable area of the roof terrace to be setback so that there is no direct line of sight to neighbouring open space or windows of the habitable rooms of adjoining dwellings within a distance of 12m.

C11 requires lighting on roof terraces to be at a low level, appropriately shaded and fixed in a non-adjustable manner so that light is projected downwards onto the floor surface of the terrace.

C12 states that where a roof terrace is proposed within the roof of the existing building, no part of the terrace should extend beyond the roof profile and it must appear secondary and subservient.

Assessment/Conclusion

The owners of 10 Queens Avenue have requested that the proposed vertical privacy louvres to the proposed north-facing window to Bedroom 3 at first floor level be required to be operable but not retractable and that the operable range be limited to prevent lines of sight to the east toward their northern (rear) terrace. This request has been agreed to by the applicant and is addressed by recommended **Condition C.1a**.

The owners of 22B Vacluse Road have raised concerns in relation to potential overlooking to their western (rear) private open space area from the proposed lowering/ partial demolition of the western section of the existing northern boundary wall.

The upper 2.38-4.18m of the western 9.3m section of the existing northern boundary wall is proposed to be demolished, presumably to facilitate winter solar access and views to the western pool/spa area. However, it is considered that the 1.8m high, above the proposed pool terrace level, section of the wall that is proposed to be maintained to the eastern 5.4m of the subject section will adequately screen lines of sight to the private open space area of 22B Vacluse Road.

It is considered that adequate privacy screening is proposed to the eastern side elevation so as to prevent lines of sight to the west-facing window to the master bedroom at 10 Queens Avenue.

Subject to the above-mentioned condition, the proposal is considered to be satisfactory in terms of visual privacy impacts upon adjoining properties.

With regard to potential acoustic privacy impacts upon adjoining properties, it is considered that no significant adverse acoustic impacts upon adjoining properties is envisaged assuming normal behaviour is observed by the occupants of the dwellings.

Noise attenuation of mechanical plant is addressed by **Condition I.2**.

The proposal, as conditioned, is considered to be acceptable with regard to the provisions of Part B3.5.4 of Woollahra DCP 2015.

Part B3.6: On-Site Parking

Site Frontage: 40m	Proposed	Control	Complies
Location of Parking	Beyond the buildable area	Within the buildable area	NO
Width of Driveway	4.5m	Compliance with the Australian Standard	YES
Number of driveway crossings	1	1	Existing non-compliance
Height of garage structures above footpath level	3.7-5.2m	2.7m	YES
Parking/driveway surface	Semi-porous	Semi-porous	YES

C1 requires that parking does not dominate the street, preserves trees and vegetation and is located within the buildable area.

C2 For garages facing the street frontage— the maximum garage width is no greater than 40% of the site frontage width or 6m, whichever is the lesser.

C4 requires parking to be located within the building envelope.

C6 Notwithstanding C4, garages may be located in the front setback (i.e. outside of the building envelope) where:

- a) the rise or fall measured to a distance of 7m from the street frontage is greater than 1 in 3; and
- b) the garage is incorporated into a b)podium or street wall; and
- c) the garage is not more than 40m² in area.

C7 For garages located in the front setback, the maximum height of the garage structure is 2.7m above the footpath level. If the existing height of the retaining/street wall or the two adjoining garages structures is higher than 2.7m, that greater height may be permitted.

C9 For separate structures, the roof form, materials and detailing complement the principal building.

C10 Garage doors are designed to complement the building design and any important character elements within the street.

C11 Materials characteristic of the street are used for new structures at the street edge.

C12 seeks to minimise the width of the driveway and no more than the relevant Australian Standard.

C13 Only one driveway entrance is to be provided.

C14 Where soil and drainage conditions allow, semi-porous surfaces are used for uncovered car parking and driveway areas to facilitate on-site stormwater infiltration and reduce limit the visual impact of hard-surface areas.

Assessment of non-compliances/ conclusion

The proposed 1.55m setback to the proposed car parking ramp at ground floor level extends beyond Council's minimum eastern side boundary setback requirement of approximately 8.7m.

It should be noted that the approval of Woollahra Development Control Plan 2015 (Amendment No 2) on 10 April 2017 included the amendment of the side boundary setback requirement from 15% of a site width greater than 23m (approximately 8.7m) to a flat requirement of 3.4m for sites with frontages greater than 23m in length. However, due to savings provisions, this amendment does not apply to the subject application.

No objection is raised in relation to the above-mentioned non-compliance on the basis that it is consistent with the existing setback distance, the majority of the eastern elevation at ground floor level is adjacent to the driveway to the adjoining property to the east (10 Queens Avenue) and it will be adequately screened by landscaping to the eastern setback area such that the visual amenity of the adjoining properties and the streetscape will not be significantly adversely affected.

Council's Development Engineer has provided the following comments in relation to the proposed vehicular access and accommodation:

- *The redundant crossing fronting No. 8 Queens Avenue shall be removed and the area cannot be utilised for parking.*
- *All proposed car parking spaces shall have clear internal dimensions of minimum 5.4m long x 2.4m wide with an additional 300mm on each side when adjacent to an obstruction higher than 150mm in accordance with AS2890.1.*
- *All proposed car parking areas shall have an internal height of minimum 2.2m between the floor and an overhead obstruction as per AS2890.1.*

The above-mentioned requirements are addressed by recommended **Condition C.10**.

The proposal, as conditioned, is considered to be acceptable with regard to the provisions of Part B3.6 of Woollahra DCP 2015.

Part B3.7: External Areas

Site Area: 2939.4m ²	Proposed	Control	Complies
Deep Soil Landscaped Area Overall	41%	50% of unbuildable area	NO
Deep Soil Landscaping – Front Setback	Approx.80%	40%	YES
Deep Soil Landscaping – Rear Setback	Approx. 15%	50%	NO
Minimum Area of Private Open Space at Ground Level	>35m ²	35m ²	YES
Location of Private Open Space	To the North where possible	To the North	YES
Maximum Height of Front Fencing	2.6m >50% open	1.5m if >50% open	NO
Level of Swimming Pool Above or Below Ground Level	3m Below Existing Ground Level	Maximum 1.2m Change	NO
Swimming Pool Boundary Setbacks	1.2-2.2	Min. 1.5	NO (Partial)

Part 3.7.1: Landscaped Areas and Private Open Space

C1 requires that 50% of the site area outside of the buildable area is to comprise deep soil landscaping.

C2 requires that 40% of the front setback area is to comprise deep soil landscaping.

C4 requires that 50% of the rear setback area comprises deep soil landscaping.

C6-C8 requires that each dwelling must have private open space with a minimum area of 35m² with a maximum gradient of 1:10.

C9 permits excavation of up to 1.2m for the purposes of achieving a compliant gradient.

C12 requires that private open space should be located to the north of the development.

C13 requires that private open space is defined through planting, fencing or landscape features.

C14 notes that the location of private open space should take advantage of the outlook and natural features of the site and maintain privacy and solar access and address surveillance.

C16 seeks to incorporate existing vegetation into the landscape treatment.

C17 requires at least 50% native species.

C18 requires vertical layering at various levels which provides for greater canopy cover. C19 seeks to link open space areas to achieve wildlife corridors.

C20 requires that landscape design considers vegetation that:

- a) Contributes to the streetscape
- b) Maintains views
- c) Does not impose upon the structural stability of buildings
- d) Maintains good visibility for pedestrians and vehicles
- e) Substantial summer shade and winter sunlight to living areas
- f) Maintains privacy between dwellings
- g) Minimises risk to services
- h) Provides sightlines to vehicles and pedestrians

Assessment/ conclusion

The objectives of the deep soil landscaped area controls are:

- O1 To ensure that the areas outside the floorplate contribute to the desired future character of the location.*
- O2 To provide sufficient deep soil landscaped area to support substantial vegetation.*
- O3 To provide for on-site stormwater absorption.*

Whilst the proposal does not comply with the overall deep soil landscaped area and deep soil landscaped area to the rear setback requirements, these areas of non-compliance are considered to be satisfactory for the following reasons:

- the proposal complies with the deep soil landscaped area requirement adjacent to the Queens Avenue frontage and provides adequate deep soil planting to the perimeter of the site thereby ensuring that the proposal will contribute adequately to the landscaped character of the locality and provide adequate landscape screening between the subject site and adjoining residential properties;
- the proposal provides approximately 40% of the total site area as landscaped area which includes both deep soil landscaped area and planters including the large landscaped podium over the proposed excavated swimming pool and associated terrace area;
- the proposal provides approximately 33m² more deep soil landscaped area than existing;
- Council's Tree & Landscape Officer's considers the proposal to be satisfactory in terms of impacts upon existing trees and the proposed landscaping; and

- Council's Development Engineer considers the proposal to be satisfactory in terms of rainwater infiltration subject to **Condition C.11**.

The landscaping plan is considered to be satisfactory in terms of amenity impacts upon surrounding properties subject to **Condition C.1b** limiting the height of landscaping to the rear setback area in order to prevent view loss to adjoining properties.

The proposal, as conditioned, is considered to be generally satisfactory with regard to the above-mentioned requirements.

Part 3.7.2: Fences

C1 requires fencing that protects occupants but with surveillance of the street.

C2 requires delineation of the public, common and private spaces and C3 requires fences to define the front entrance.

C4 limits fencing to 1.2m, or 1.5m if 50% transparent or open. On the high side of the street, C6 allows fences to a height of 1.2m above the high side.

C7 requires gates to open inwards.

C8 stipulates that where a vehicular entrance is proposed, a 45° splay or its equivalent is provided either side with minimum dimensions of 2m by 2m.

C11 allows regular stepping of fences on sloping sites.

C15 states that fences should be compatible within the streetscape.

C16 does not permit corrugated iron or barbed wire in fencing.

Assessment/ conclusion

The objectives of the fencing controls are:

- O1 To ensure fences and walls improve amenity for existing and new residents and contribute positively to streetscape and adjacent buildings.*
- O2 To ensure that fences and walls are not visually intrusive in the streetscape and to enhance pedestrian safety.*
- O3 To ensure that fences and walls do not unreasonably restrict views and vistas from streets and other public spaces.*
- O4 To ensure that development creates well defined areas of public and private space.*

It is proposed to erect 2.6m high palisade pedestrian and vehicular entry security gates to the street alignment. The existing solid gates are 2.24 m high. Although the gates are setback approximately 2m in from the street alignment, concern is raised that they would have an adverse impact upon the streetscape due to their excessive height. Accordingly, it is recommended that they be required to not exceed 1.8m in height which is compatible with the 1.76m high palisade gates to the adjoining property 10 Queens Avenue (see **Condition C.1c**).

Otherwise, all fencing is either proposed to be maintained as existing or lowered from existing.

Council's Development Engineer has provided the following comments in relation to the absence of proposed driveway splays:

2m x 2.5m pedestrian splays shall be provided at the property line on both sides of the driveway as per AS/NZS 2890.1:2004 Clause 3.2.4" to ensure driveway and pedestrian vision.

This requirement is addressed by recommended **Condition C.10**.

Part 3.7.3: Site Facilities

C1 requires lockable mailboxes at the street front and integrated within the front fence or entry.

C2 requires lockable storage space of 8m³ per dwelling.

C3 and C4 require at least one clothes drying facility that is secure, has access to sunlight and away from public view.

C10 allows non-solid fuel burning fire places only.

Assessment/ conclusion

The proposal is considered to be generally satisfactory with regard to the above-mentioned requirements.

Part 3.7.4: Ancillary Development – Swimming Pools

C3 requires swimming pools, including coping, to be setback 1.5m from property boundaries.

C4 states that swimming pool surrounds are to be no more than 1.2m above or below ground level.

C5 limits the depth of a swimming pool to 2m.

Assessment/ conclusion

The objectives of the swimming pool controls are:

- O1 To provide for recreational opportunities for swimming without compromising the amenity of the adjoining properties.*
- O2 To limit excavation.*
- O3 To retain trees and vegetation of landscape value.*

The proposed swimming pool is excavated 3m below existing ground level which is non-compliant with the 1.2m control. The coping to the proposed spa extends to within 1.2m of the western side boundary which is non-compliant with the 1.5m setback requirement.

No objection is raised in relation to these areas of non-compliance on the basis that the proposed excavation is considered to be satisfactory in terms of potential environmental impacts, subject to conditions, as discussed previously under the sections *13.8 Part 6.2: Earthworks* and *14.2 Chapter B3: General Development Controls Part B3.4: Excavation*.

Further, no adverse amenity impacts upon adjoining properties or the public domain, as a result of the non-compliances, are envisaged.

The proposal is considered to be acceptable with regard to the provisions of Part B3.7 of Woollahra DCP 2015.

Part 3.7.4: Ancillary Development –Outbuildings

C1 states that an outbuilding is to be located within the buildable area or the rear setback.

C2 limits the height of an outbuilding to 3.6m.

C3 states that if an outbuilding is located outside the building envelope, it must not reduce the deep soil landscaped area below the minimum required for development.

Assessment/ conclusion

The objectives of the outbuilding control are:

- O1 To ensure that outbuildings do not unreasonably compromise the amenity of the occupants or the adjoining properties.*
- O2 To ensure that the required deep soil landscaped area and level area of private open space are achieved.*

The proposed landscaped podium over the proposed excavated north-western section of the site containing the swimming pool/ spa, adjoining undercover terrace and part of a car parking area is considered to constitute an outbuilding as it does not constitute floorplate area as it is less than 1m above existing ground level (it is approximately 0-400mm above existing ground level).

Whilst the landscaped podium structure can be attributed to the above-mentioned non-compliances with Council's deep soil landscaped area requirements, as discussed previously under *14.2 Chapter B3: General Development Controls Part 3.7.1: Landscaped Areas and Private Open Space*, it is considered that there is no significant adverse environmental impact associated with these non-compliances as the proposal increases the existing deep soil landscaped area provision.

It is considered that the landscaped podium structure will not have any significant adverse environmental impact upon the locality including adjoining properties and the public domain.

Further, the proposed landscaped podium structure will provide a large usable lawn area for passive recreational purposes for the occupants of the proposed development.

Part B3.8: Additional Controls for Development Other Than Dwelling Houses

Dual Occupancy

C1 states that both dwellings in a dual occupancy development must be complementary in terms of style, design, materials, roof form and colour scheme.

C2 does not permit private open space within the front setback with C3 requiring each dwelling to have access to private open space.

C4 states that private open space must not be overlooked by the adjoining dual occupancy dwelling.

C5 requires a common driveway for dual occupancy development.

Assessment/ conclusion

Whilst the 2 dwellings are very different from one another in terms of style, design, materials, roof form and colour scheme, the subject application is considered to be exceptional in terms of involving the conservation, restoration and sympathetic adaption of the heritage listed existing dwelling-house at 6 Queens Avenue.

Council's Heritage Officer has raised no objection to the contemporary design of the proposed new dwelling at 8 Queens Avenue or its impact upon the heritage listed dwelling item at 6 Queens Avenue on the basis that they are adequately separated above-ground and will appear as 2 distinct, independent dwellings.

The proposal is considered to be acceptable with regard to the additional controls in Part B3.8 of the Woollahra DCP 2015.

Part B3.10: Additional Controls for Development in Sensitive Locations

Site Area: 1110m ²	Proposed	Control	Complies
Level of Swimming Pool Above or Below Ground Level	3m below existing ground level	Maximum 1.2m above existing ground level	YES

Harbour Foreshore Development

C1 notes that building forms should follow the natural topography and maintain vegetation cover as viewed from Sydney Harbour.

C2 requires that roof lines be below the tree canopy.

C3 requires the use of complimentary and compatible materials. Excessive use of glass resulting in glare is not permitted.

C4 limits boatsheds and other outbuildings to one storey and designed so as to complement the existing character.

C5 requires that swimming pools are not located more than 1.2m above or below existing ground level.

C6 requires that swimming pools and spas are appropriately treated when viewed from the Harbour, such as with sandstone.

C16 requires development on foreshore properties to maintain or reduce current levels of stormwater or sediment run-off entering the harbour.

C19 requires the retention of the existing tree canopy.

C20 states that development on foreshore properties does not significantly alter the topography and preserves natural foreshore features including cliffs, rock outcrops, rock shelves and beaches.

Assessment/ conclusion

The proposal is considered to be acceptable with regard to the additional controls in Part B3.10 of the Woollahra DCP 2015.

14.3. Chapter E1: Parking and Access

Part E1.4: Residential parking

	Proposed	Control	Complies
Max Number of Car Parking Spaces	11	Max. 2 per dwelling (4)	NO

The proposal provides 7 car spaces beyond the maximum permissible. The following section outlines matters for consideration in this regard.

E.1.2.2 Matters the consent authority will consider

In determining car parking provision for any development, including a change of use, Council will take into account the following matters:

- *the scale and nature of the development;*
- *existing traffic generation associated with the site;*
- *traffic generation associated with the proposed development;*
- *traffic volumes on the road network in the area of the development and the capacity of the road network;*
- *impacts on traffic and pedestrian safety;*
- *impacts on residential amenity;*
- *for commercial development—the type of activities on the site, including allocation floor area for different uses associated with the commercial development e.g., area dedicated to back-of-house uses such as storage areas;*
- *for residential development—a proposal to accommodate a car share scheme parking space on the site or directly adjoining the site;*
- *methodologies to ameliorate traffic generation impacts (e.g. traffic calming);*
- *the availability of public parking (on-street and off-street) near the development;*
- *the availability of public transport to serve the development;*
- *the probable mode of transport of users to and from the development;*
- *the suitability of street lighting in the area;*
- *whether the development warrants special consideration because it is proposed for, or relates to, a heritage item;*
- *the characteristics of the streetscape and the site, particularly the subdivision pattern, topography, street design and width, street tree planting, on-street parking or loading spaces and any existing access arrangements; and*
- *construction method.*

The existing covered car parking at the subject site provides 7 car spaces for 6 Queens Avenue (6 within the lower ground floor level and 1 under the entry portico) and 1 car space for 8 Queens

Avenue, a total of 8 car spaces. The subject development proposes 11 covered car spaces (10 within the lower ground floor level and 1 under the entry portico).

To ensure the proposal does not place additional pressure on demand for on-street car parking, it is recommended that the existing car parking provision can be retained for the heritage item 'Villa Igeia' (7 car spaces) plus one additional car space for the new dwelling (2 car spaces), a total of 9 car spaces. The provision of 2 additional car spaces is not supported due to the significant non-compliance with Council's volume of excavation control. Accordingly, recommended **Condition C.1f** requires the deletion of the lower ground floor level tandem garage thereby reducing the total car parking provided on site from 11 down to 9 car spaces.

The residual 5 excess car parking spaces are either provided underground or under the existing entry portico to the rear of the heritage item and therefore do not involve any potential for adverse visual impacts upon the locality.

The proposed excavation associated with the car parking is considered to be satisfactory in terms of potential environmental impacts, subject to conditions, as discussed previously under the sections *13.8 Part 6.2: Earthworks* and *14.2 Chapter B3: General Development Controls Part B3.4: Excavation*.

In the absence of any potential significant adverse environmental impacts, no objection is raised in relation to the excess car parking provision.

The proposal is considered to be satisfactory with regard to the provisions of Part E.1 of Woollahra DCP 2015.

14.4. Chapter E2: Stormwater and Flood Risk Management

The provisions of this chapter require the adequate provision of sustainable stormwater management, the controlled release of stormwater, to prevent flooding downstream in the prevention of stormwater pollution to Sydney Harbour and waterways and to protect land and property from flooding.

Council's Development Engineer has provided the following comments in relation to these issues:

Site Drainage comments

The Stormwater Disposal Concept Plan, Job No. 161227, Revision P5, prepared by Taylor Thomson Whitting, dated 04/05/2017 accompanied by a Civil Engineering Report, referenced 161227 – P, prepared by Taylor Thomson Whitting, dated 15 November 2016 is generally satisfactory subject to the following conditions:

- *A certificate from a qualified engineer is required demonstrating that the pipeline within the existing easement is in working condition and provides enough capacity for the proposed development.*
- *The proposed Green Roof shall be designed in accordance with the Building Code of Australia and the City of Sydney Council Green roof Resource Manual guidelines.*
- *The rate of stormwater discharge to Council's kerb and gutter shall be no greater than 20l/s.*

The concept plan is subject to the submission and approval of Stormwater Management Plan for the site prior to release of the Construction Certificate. Details are to be in

accordance with Council's Chapter E2 "Stormwater and Flood Risk Management" DCP and Local Approvals Policy. This is to ensure that site stormwater is disposed in a controlled and sustainable manner.

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

Flooding & Overland Flow comments

Not affected.

Conclusion

The proposal, as conditioned, is considered to be acceptable with regard to the provisions of Part E.2 of Woollahra DCP 2015.

14.5. Chapter E3: Tree Management

Prescribed trees

The species or kinds of trees that are prescribed for the purpose of clause 5.9(2) of Woollahra LEP 2014 are:

- 1. Any tree or palm, whether of indigenous, endemic, exotic or introduced species with a diameter spread of branches greater than 3m or with a height greater than 5m, irrespective of the spread of branches, and that is not identified in this chapter as exempt.*
- 2. Any tree, whether of indigenous, endemic, exotic or introduced species with roots greater than 50mm diameter, but only if root pruning is proposed.*
- 3. Any tree or palm identified in Council's Significant Tree Register.*
- 4. Any tree or palm identified in Schedule 5 Environmental Heritage of Woollahra LEP, or located on land identified in Schedule 5 including:*
 - a) a tree listed as a heritage item;*
 - b) a tree located on land identified as containing a heritage item; or*
 - c) a tree on land within a heritage conservation area.*
- 5. Any bushland as defined in State Environmental Planning Policy 19 – Bushland in Urban Areas.*

In this regard, Council's Tree & Landscape Officer's referral response states:

Located within the subject property are 12 trees and well established hedges along the southern and northern boundaries. From the information supplied it would appear that all existing trees and established hedges with the exception of 1 Kentia Palm are proposed for removal. The landscape value of the trees and hedges proposed for removal are however of moderate to low landscape significance. The proposal is considered to be satisfactory in terms of tree preservation subject to conditions.

The proposal, as conditioned, is considered to be acceptable with regard to Chapter E.3 of the Woollahra DCP 2015.

14.6. Chapter E4: Contaminated Land

The provisions of this chapter require the adequate management of potentially contaminated land in order to adequately ensure public health and safety, essentially replicating requirements of SEPP 55-Remediation of Land. Consideration has been given as to whether the land is contaminated. In the absence of any information indicating the potential contamination of the sites, further consideration of this issue is not warranted in this instance. The proposal is considered to be acceptable with regard to the objectives and controls in Chapter E4 of the Woollahra DCP 2015.

14.7. Chapter E5: Waste Management

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. Council's standard conditions have been applied in order to adequately address the provisions of Chapter E5 of the Woollahra DCP 2015 have been imposed.

14.8. Chapter E8: Adaptable Housing

C2 states that dwelling-houses and dual occupancies are encouraged to provide adaptable housing design. Lift access is proposed to all levels of the proposed dwellings and the proposal is therefore considered to be satisfactory with regard to the provisions of Chapter E8 of the Woollahra DCP 2015.

15. SECTION 94 CONTRIBUTION PLANS

The Woollahra Section 94A Contributions Plan is applicable. In accordance with Schedule 1, a 1% levy (of the total cost of works) applies. With a cost of works of approximately \$22,093,500, a payment of \$220,935 is required by **Condition C.2** which will be used for a variety of works as outlined in Schedule 2 of the Section 94A Contributions Plan.

16. APPLICABLE ACTS/REGULATIONS

16.1. Clause 92 of the EPA Regulation 2000

Clause 92 of the EPA Regulation 2000 requires Council to take into consideration Australian Standard AS 2601-1991: The demolition of structures. This requirement is addressed **Condition E.28**.

16.2. Swimming Pools Act 1992

A swimming pool is at all times to be surrounded by a child-resistant barrier that separates the swimming pool from any residential building and that is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations. Additional provisions relate to:

- a) The swimming pool must be registered in accordance with Section 30B of the Swimming Pools Act 1992
- b) A Certificate of Compliance issued pursuant to Section 22D of the Swimming Pools Act 1992
- c) Water recirculation and filtration systems
- d) Backwash must be discharged to the sewer.

These requirements are addressed by standard conditions in relation to the proposed pool.

17. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in the report.

18. THE SUITABILITY OF THE SITE

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

19. CONCLUSION

This assessment has considered the application in terms of the relevant matters under Section 79C of the Environmental Planning and Assessment Act and other relevant considerations and the proposal is considered to be satisfactory in this regard, subject to conditions.

20. DISCLOSURE STATEMENTS

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

21. RECOMMENDATION PURSUANT TO SECTION 80(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

THAT Council, as the consent authority, is of the opinion that the written request from the applicant under Part 4.6 of Woollahra LEP 2014 to the allow the contravention of the 9.5m maximum height development standard prescribed under Part 4.3 of Woollahra LEP 2014 has adequately addressed the relevant matters. Further, it is considered that the height non-compliance will not be contrary to the public interest as it is considered to be consistent with the relevant objectives of the standard.

AND that Council, as the consent authority, grant development consent to DA502/2016 for the consolidation of 2 allotments, alterations and additions to the existing heritage listed dwelling-house at 6 Queens Ave, the demolition of an existing dwelling-house at 8 Queens Ave and the construction of a new dwelling to form a horizontally attached (at lower ground floor level) dual occupancy development, swimming pool, landscaping & earthworks on land at 6 & 8 Queens Avenue 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.

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*.

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*.

Site means the land being developed subject to this consent.

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.

Work for the purposes of this consent means:

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

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

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 architectural plans to which is affixed a Council stamp “**Approved DA Plans**” and the supporting documents listed below as submitted by the Applicant **unless modified by any following condition**. Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date
1100 Rev I, 1101 Rev I, 1102 Rev I, 1103 Rev E, 2101 Rev F, 2102 Rev F, 3000 Rev B, 3001 Rev F & 3002 Rev F	Architectural plans	Tzannes	15/11/16
LP02-3616 issue 01 Rev B	Landscape Plan	William Dangar	Nov. 2016
Job No. 161227, Revision P5	Stormwater Management Plan	Taylor Thomson Whitting	04/05/2017
161227	Statement 1 regarding Council Queries (geotechnical)	Taylor Thomson Whitting	14 July 2017
161227	Statement 2 regarding Council Queries (geotechnical)	Taylor Thomson Whitting	18 July 2017
PSM3065-002L REV1	Geotechnical Report	Pells Sullivan Meynink	16 November 2016
PSM3065-003L	Geotechnical Comments	Pells Sullivan Meynink Engineering Consultants	8 March 2017
referenced 161227 – P	Civil Engineering Report (stormwater)	Taylor Thomson Whitting	15 November 2016
Job No. 16040	Traffic Report	TEF Consulting	8/11/2016
Job No. 16085	Traffic Management Plan	TEF Consulting	15 March 2017
Job No. 16040 Sheets 1 & 2, Rev B	Proposed car park layout	TEF Consulting	1/03/2017
Project No. 1900068698	Ausgrid Electricity Network Relocation Application	Ausgrid	2 November 2016

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

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

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 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

Council Ref No.	Species	Location	Dimension (m)
1	<i>Howea forsteriana</i> (Kentia palm)	Eastern side of existing dwelling on 6 Queens Avenue Vacluse	8 x 3

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

- b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (m)
3	<i>Syzygium sp.</i> (Lillypilly) – hedge	South east and south western boundaries of 6 Queens Avenue Vacluse	5 high
4	<i>Olea europea var. europea</i> (European Olive)	Northern façade of existing dwelling on 6 Queens Avenue Vacluse	5 x 4
5	<i>Olea europea var. europea</i> (European Olive)	Northern façade of existing dwelling on 6 Queens Avenue Vacluse	5 x 4
6, 7, 8, 9	<i>Olea europea var. europea</i> (European Olive)	North eastern area of 6 Queens Avenue Vacluse	5 x 4 each
10	<i>Murraya paniculata</i> (Mock Orange) – hedge	Northern boundary of 6 Queens Avenue Vacluse	4 high x 3 depth
11	<i>Phoenix canariensis</i> (Canary Island Date palm)	North eastern corner of existing dwelling on 6 Queens Avenue Vacluse	7 x 4
12	<i>Syagrus romanzoffianum</i> (Cocos palm)*	Eastern side of existing dwelling on 6 Queens Avenue Vacluse	8 x 4
13	<i>Plumeria acutifolia</i> (Frangipani)	Eastern side of existing dwelling on 6 Queens Avenue Vacluse	4 x 4
14	<i>Ulmus parvifolia</i> (Chinese Weeping Elm)	Western side of front entrance gate to 6 Queens Avenue Vacluse	5 x 5
15	<i>Ulmus parvifolia</i> (Chinese Weeping Elm)	Eastern side of front entrance gate to 6 Queens Avenue Vacluse	5 x 5
16	<i>Cupressocyparis leylandii</i> (Leyland Cypress) – hedge	Eastern side boundary of 6 Queens Avenue Vacluse	5 high
17	<i>Thuja sp.</i> (Arborvitae)	Western side boundary of 8 Queens Avenue Vacluse	5 high

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

* Tree is listed as an exempt species in Woollahra Council's Tree Management DCP. Consent from Council is not required to remove exempt tree species.

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

B.1 Construction Certificate required prior to any demolition

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

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

B.2 Identification of Hazardous Material

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

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

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

B.3 Public Road Assets prior to any work/demolition

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

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

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

The reports are to be supplied in both paper copy and electronic format in Word. Photographs are to be in colour, digital and date stamped. If the required report is not submitted then

Council will assume there was no damage to any infrastructure in the immediate vicinity of the site prior to the commencement of any work under this consent.

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

B.4 Establishment of Tree Protection Zones (TPZ)

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

a) Tree Protection Zone areas

Council Ref No.	Species	Location	Radius from Centre of Trunk (Metres)
1	<i>Howea forsteriana</i> (Kentia palm)	Eastern side of existing dwelling on 6 Queens Avenue Vacluse	2

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

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

- b) Tree Protection Zones shall be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence shall be established prior to any materials being brought onto the site and before the commencement of works including demolition. The area within the fence shall be mulched and maintained to a depth of 75mm. The soil within the TPZ shall be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there shall be no access within the TPZ.
- c) A sign identifying the Tree Protection Zone shall be erected on each side of the protection fence indicating the existence of a TPZ. Signage must be visible from within the development site.
- d) No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones, unless specified in Condition B.2 of this consent.
- e) Establishment of Ground protection
Temporary access within the TPZ for pedestrian and machinery movements shall only be permitted with the approval of the site arborist or unless specified in Condition B.2 of this consent. Appropriate ground protection shall be installed under the supervision of the site arborist.
- f) All site personnel and contractors must be made aware of all tree protection requirements associated with these conditions of consent.
- g) The project arborist shall provide written certification of compliance with the above condition.

B.5 Permissible work within Tree Protection Zones

The following works are permissible within the Tree Protection Zone:

Council Ref No.	Species	Radius from Trunk (metres)	Approved works
1	<i>Howea forsteriana</i> (Kentia palm)	2	Approved soft landscaping

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

B.6 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:

Stage of arboricultural inspection	Compliance documentation and photos shall be included
Installation of tree protection fencing	Compliance with tree protection measures
Prior to the issue of a Final Occupation Certificate	Supervise the dismantling of tree protection measures

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

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

B.7 Recording of Heritage Items prior to any alteration

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

The archival record is to be completed by a heritage consultant listed by the NSW Heritage Office or by another suitably qualified consultant who must demonstrate a working knowledge of archival principles.

The archival record is to include:

- a) The submitted heritage report including the heritage assessment undertaken in accordance with the current guidelines of the NSW heritage office, the statement of significance, the dilapidation report and the reasons for demolition.
- b) A site plan at a scale of 1:200 (or 1:500 if appropriate) of all structures and major landscape elements including their relationship to the street and adjoining properties.
- c) Annotated measured drawings: floor plans, roof plans, elevations and at least one cross section, each at a scale of 1:100.
- d) Photographic archival records must be taken of the building, landscape or item in accordance with 'The Heritage Information Series, Photographic Recording of Heritage Items Using Film or Digital Capture 2006' published by the NSW Department of Planning Heritage Branch.

The archival recode must include:

- Context Photographs- A recording of each site, place or movable item or collection in its context;
- Relationship of Buildings on the Site to Each Other;
- Individual Building or Structures- Photographs of each façade with details where appropriate including but not limited to: eaves, soffits, rainwater heads, downpipes, window reveals and sills, doorways and steps, and balustrades;
- Internal Spaces- Images should be taken in a sequence to show all internal elevations, including floors and ceilings, where possible. Special attention should be placed on structural elements, fittings and any movable items.

The following table summarises the lodgement details for photographic records, depending on which material is selected. It is satisfactory to supply one material only and digital material is recommended.

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

The full archival recording is to be submitted to the satisfaction of Council's heritage officer prior to the commencement of demolition, works and prior to the issue of a Construction Certificate. The original will be retained by Council and a copy will be provided to the Woollahra Local History Library.

These photographic records must be submitted to Council prior to the demolition or removal of any part of the building and landscape elements to be demolished.

Note: The NSW Heritage Office Guidelines can be downloaded free of charge from
<http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/infoarchivalrecords.pdf>

B.8 Heritage training of foremen, tradesmen/ work related staff

All persons responsible for the management, maintenance and construction works to the site shall be advised of/ made familiar with the heritage significance of the heritage item 'House and interiors, front fencing' at 6 Queens Avenue and the contents of the Conservation Management Strategy by Urbis, dated 15 November 2016.

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

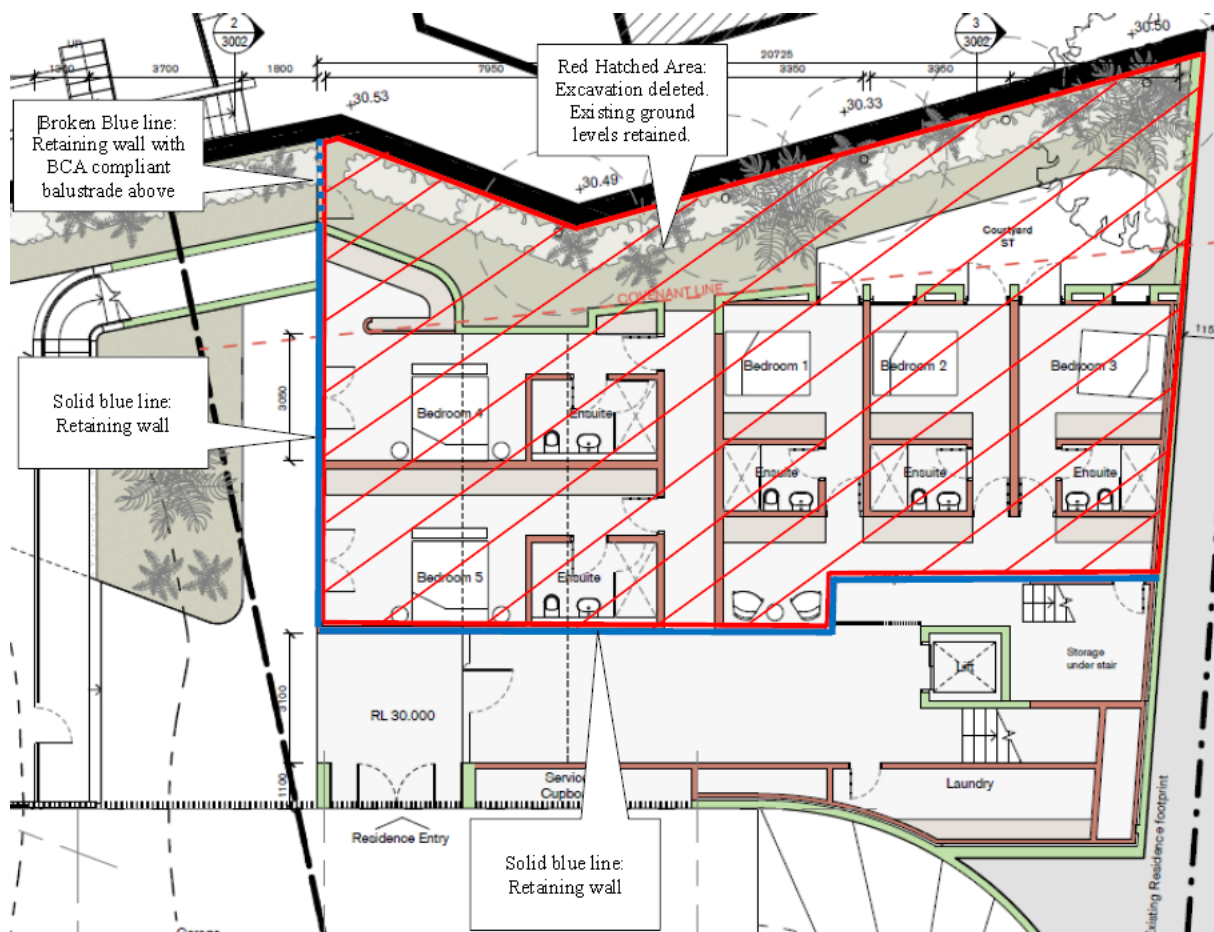
C.1 Modification of details of the development (s80A(1)(g) of the Act)

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 mitigate potential loss of visual privacy impacts upon the northern (rear) terrace to the adjoining property to the east (10 Queens Avenue), the vertical privacy louvres to the north-facing window to Bedroom 3 at first floor level shall be operable but not retractable. The operable range shall be limited to prevent lines of sight to the east toward the existing northern (rear) terrace to 10 Queens Avenue.
- b) In order to adequately mitigate view loss to 10 Queens Avenue, the proposed row of 11 x 10m high (hedged) above the proposed excavated finished ground level Magnolia grandiflora 'Exmouth' trees in 400 litre pots at planting proposed adjacent to the eastern 30m of the northern (rear) boundary shall be substituted for an alternative species of landscaping such as a variety of Lilly Pilly that will not exceed RL36 at maturity (a mature height level of approximately 6m above the proposed excavated finished ground level and approximately 3m above the section of the existing ground level adjacent to the northern elevation of the proposed new dwelling that is required to be retained by **Condition C.1f**). The 6m high trees shall be planted in 200 litre pots at planting approximately (3.5-4.5m high at planting) and the 3m high trees/ shrubs in 100 litre pots (approx. 2.5m high at planting) rather than 400 litre fully grown 6m specimens as proposed in order to promote vigor /re-establishment health of the plantings and to reduce planting shock that is typically associated with planting fully mature trees, as advised by Council's Tree and Landscape Officer.
- c) In order to mitigate a potential adverse visual impact upon the streetscape, the proposed approximately 2.6m high above finished ground level pedestrian and vehicular entry gates are to be reduced to a maximum of 1.8m above finished ground level.
- d) In order to mitigate potential adverse heritage related impacts, the proposed new metal framed windows to the heritage listed dwelling located at 6 Queens Avenue shall match the existing window frame profiles.
- e) In order to mitigate potential adverse heritage related impacts, all of the original internal walls at Level 1 of the heritage listed dwelling located at 6 Queens Avenue, shall be able to be interpreted via the use of portal frames, bulkheads or wall nibs providing evidence of the original internal wall layout. This is limited to the areas of Master Bedroom 1 (including the dressing room and master ensuite), Bedroom 4 (including the wardrobe

and ensuite), Bedroom 5/6 including the adjacent bathroom to Bedroom 5 and Master Bedroom 3 (including the ensuite and robe).

- f) In order to reduce the extent of excavation to a reasonable amount, the proposed tandem car spaces below the existing heritage item 'Villa Igeia' shall be deleted and the existing ground levels retained. In addition the northern section of the lower ground floor level to the proposed new dwelling (the rumpus room, bedrooms 1-5 and the associated en suites) and the adjacent northern setback area, as indicated in the diagram below, shall be deleted and the existing ground levels retained. Retaining walls are permitted to the western and southern sides of the deleted lower ground floor area, and balustrading to accord with the BCA is permitted to the west of the northern setback area as indicated in the diagram below.



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 Payment of Long Service Levy, Security, Contributions and Fees

The certifying authority must not issue any *Part 4A Certificate* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and

fees prior to the issue of a *construction certificate, subdivision certificate or occupation certificate*, as will apply.

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit -making good any damage caused to any property of the Council	\$519,400	No	T115
DEVELOPMENT LEVY under Woollahra Section 94A Development Contributions Plan 2011 This plan may be inspected at Woollahra Council or downloaded at www.woollahra.nsw.gov.au .			
Development Levy (Section 94A)	\$220,935 + Index Amount	Yes, quarterly	T96
INSPECTION FEES under Section 608 of the Local Government Act 1993			
Public Road and Footpath Infrastructure Inspection Fee (\$138 Fee)	\$452	No	T45
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$740,787 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.3 Tree Management Plan

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

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

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

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

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

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

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

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

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

Note: The “*Do it Right On Site, Soil and Water Management for the Construction Industry*” publications can be downloaded 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.5 Structural Adequacy of Existing Supporting Structures

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

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

C.6 Professional Engineering Details

The *Construction Certificate* plans and specifications, required by clause 139 of the Regulation, must include detailed *professional engineering* plans and/or specifications for all structural, electrical, hydraulic, hydro-geological, geotechnical, mechanical and civil work complying with this consent, approved plans, the statement of environmental effects and supporting documentation. Detailed professional engineering plans and/or specifications must be submitted to the *Certifying Authority* with the application for any *Construction Certificate*.

Note: This does not affect the right of the developer to seek staged Construction Certificates.

C.7 Road and Public Domain Works

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

- a) Stormwater discharge connection through existing outlets to Council’s kerb and gutter.

- b) Relocation of the existing electrical pole. Refer to Ausgrid Electricity Network Relocation Application, Project No. 1900068698, dated 2 November 2016.
- c) Construction of a vehicular crossings having a width of 5m at property boundary and perpendicular to the road carriageway in accordance with Council's standard driveway drawing RF2_D. Note: the vehicular crossing shall be a minimum of 1m away from any electrical poles and Telstra pits.
- d) A design longitudinal surface profile for the proposed driveway must be submitted for assessment. The existing footpath levels are to be maintained wherever possible and cannot be altered without Council's approval.
- e) Removal of the redundant vehicular crossing fronting No. 8 Queens Avenue and any other driveway crossing and kerb laybacks which will no longer be required.
- f) Reinstatement of footpath, kerb and gutter to match existing.
- g) Where a grass verge exists, the balance of the area between the footpath and the kerb over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of Couch turf.

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

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

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

Note: Refer to the advising titled *Roads Act Application*.

C.8 Provision for Energy Supplies

The applicant must provide to the *Certifying Authority* a letter from Energy Australia setting out Energy Australia's requirements relative to the provision of electricity/gas supply to the development.

Any required substation must be located within the boundaries of the site.

Where an electricity substation is required within the site but no provision has been made to place it within the building and such substation has not been detailed upon the approved development consent plans a section 96 application is required to be submitted to Council. Council will assess the proposed location of the required substation.

The *Construction Certificate* plans and specifications, required to be submitted pursuant to clause 139 of the *Regulation*, must detail provisions to meet the requirements of Energy Australia.

Where the substation is required the *Construction Certificate* plans and specifications must provide:

- a) A set back not less than 3m from the road boundary and dense landscaping of *local native plants* to screen the substation from view within the streetscape,
- b) A set back not less than 3m from any other site boundary (fire source feature) and not within the areas required to be kept clear of obstructions to vehicle visibility pursuant to clause 3.2.4 of AS2890.1-1993(See: Figures 3.2 and 3.3),

- c) A set back to and not within the drip line of any existing tree required to be retained,
- d) A setback not less than the 10m from any NSW Fire Brigade booster connection as prescribed by clause 5.6.3(d)(iii) of AS 2419.1-1994 or be separated from any booster connections by a construction with a fire resistance rating of not less than FRL 90/90/90 for a distance of not less than 2 m each side of and 3 m above the upper hose connections in the booster assembly pursuant to clause 5.6.3(c)(ii) of AS 2419.1-1994, and
- e) The owner shall dedicate to the appropriate energy authority, free of cost, an area of land adjoining the street alignment to enable an electricity substation to be established, if required. The size and location of the electricity substation is to be in accordance with the requirements of the appropriate energy authority and Council. The opening of any access doors must not 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.9 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 pre-set acceptable limits for peak particle velocity and ground water fluctuations;
 - Details recommended hold points to allow for the inspection and certification of geotechnical and hydro-geological measures by the professional engineer; and;
 - Details a contingency plan.

C.10 Parking Facilities

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

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.

In addition the plans must detail:

- The redundant crossing fronting No. 8 Queens Avenue shall be removed and the area shall not be utilised for parking of vehicles.
- All proposed car parking spaces shall have clear internal dimensions of minimum 5.4m long x 2.4m wide with an additional 300mm on each side when adjacent to an obstruction higher than 150mm in accordance with AS2890.1.
- All proposed car parking areas shall have an internal height of minimum 2.2m between the floor and an overhead obstruction as per AS2890.1.
- 2.0m x 2.5m pedestrian splays shall be provided at the property line on both sides of the driveway as per AS/NZS 2890.1:2004 Clause 3.2.4” to ensure driveway and pedestrian vision.

C.11 Stormwater management plan

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

- a) General design in accordance Stormwater Disposal Concept Plan, Job No. 161227, Revision P5, prepared by Taylor Thomson Whitting, dated 04/05/2017 other than amended by this and other conditions;
- b) The discharge of stormwater, by direct connection, via existing outlets to Queens Avenue and existing easement to drain water located to the south west corner of subject site. Note: The rate of stormwater discharge to Council's kerb and gutter shall be no greater than 20l/s;
- c) A certificate from a qualified engineer is required demonstrating that the pipeline within the existing easement is in working condition and provides enough capacity for the proposed development;
- d) Rainwater tank volume shall have a volume of 22m³ for the entire site area in accordance with Council's Woollahra DCP Chapter E2 – Stormwater Flood Risk Management;
- e) The proposed Green Roof shall be designed in accordance with the Building Code of Australia and the City of Sydney Council Green roof Resource Manual guidelines.
- f) Compliance the objectives and performance requirements of the BCA;
- g) Any rainwater tank (See Note below) required by BASIX commitments including their overflow connection to the *Stormwater Drainage System*, and
- h) General compliance with the Council's Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management and
- i) Basement pump-out system

Layout plan

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

- a) All pipe layouts, dimensions, grades, lengths and material specification,
- b) Location of Rainwater Tanks,
- c) All invert levels reduced to Australian Height Datum (AHD),
- d) Location and dimensions of all drainage pits, and
- e) Point and method of connection to Councils drainage infrastructure

Rainwater Tank details

- a) Any potential conflict between existing and proposed trees and vegetation,
- b) Internal dimensions and volume of the proposed detention storage,
- c) Diameter of the outlet to the proposed detention storage basin,
- d) 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,
- e) Details of access and maintenance facilities,
- f) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary products,
- g) Details of the emergency overland flowpath (to an approved Council drainage point) in the event of a blockage to the tank,

Overland Flowpath (where applicable)

- a) Details of the overland flow provision,
- b) Calculations to confirm volumes, pipe sizes, size of overland flowpaths,
- c) Pathways are generally required to provide for safe, convenient, pedestrian access and cater for overland flows of discharges from the 100 year ARI event between streets, or from streets to recreational and/or community facilities,
- d) For site developments, an overland flowpath shall be provided through the site to cater for the 100 yr ARI event flows from the upstream catchment. These flows must be safely conveyed through the site to Council's road and/or drainage system.

Copies of certificates of title

- a) Showing the creation of private easements to drain water by gravity, if required.

Subsoil Drainage

- a) Subsoil drainage details
- b) Clean out points
- c) Discharge point.

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

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

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

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

C.12 Non-gravity drainage systems

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 the non-gravity drainage systems (charged, siphon, pump/sump systems) being designed in accordance with Section 6.2.4 – "Non-gravity drainage systems" of Council's Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

Note: This DCP is available from Council's website www.woollahra.nsw.gov.au.

C.13 Checking Construction Certificate plans & protecting assets owned by the Sydney Water Corporation

The approved plans must be submitted to a Sydney Water Quick Check agent to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easement, and any requirements need to be met. Plans will be appropriately stamped.

Please refer to the web site www.sydneywater.com.au for:

- Quick Check agents details – see Building and Development then Quick Check and
- Guidelines for Building Over/Adjacent to Sydney Water Assets – see Building and Development then Building and Renovating

Note: Further information can be obtained from the Sydney Water Corporation by visiting their web site: <http://www.sydneywater.com.au> or telephone 13 20 92.

C.14 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.15 BASIX commitments

The *applicant* must submit to the *Certifying Authority* *BASIX Certificate* Nos. A262650 & 732469S 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.16 Waste Storage per dwelling

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

- a) A storage area for 1 x 120 litre general wastes bin, one x 240 litre green waste bin, two x recycling crates behind the building line or within non-habitable areas of the dwelling
- b) A path for wheeling bins between the waste and recycling storage area and the collection point free of steps and kerbs and having a maximum grade of 1:8.

C.17 Swimming and Spa Pools – Child Resistant Barriers

The *Construction Certificate* plans and specifications required by Clause 139 of the *Regulation* must demonstrate compliance (by showing the proposed location of all child-resistant barriers and the resuscitation sign) with the provisions of the *Swimming Pools Act* 1992 and the Building Code of Australia.

Approval is not granted for the modification of any boundary fencing beyond what is authorised by the stamped approved plans, as modified by any condition of consent or what is permitted to be carried out as ‘exempt development’ pursuant to *State Environmental Planning Policy (Exempt & Complying Development Codes) 2008*.

Note: A statement to the effect that isolation swimming pool fencing complying with AS1926 will be installed does not satisfy this condition. The location of the required barriers and the sign must be detailed upon the *Construction Certificate* plans.

C.18 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 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:

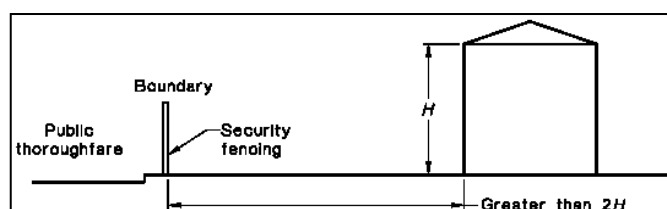
- a) the boundaries of the *site* by permanent marks (including permanent recovery points);
- b) the location and level of foundation excavations, footings, walls and slabs by permanent marks, pegs or profiles relative to the boundaries of the land and relative to Australian Height Datum (“AHD”) in compliance 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.

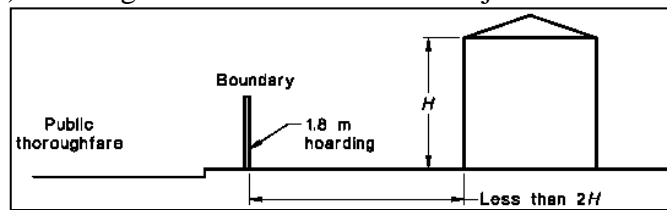
D.3 Security Fencing, Hoarding and Overhead Protection

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.

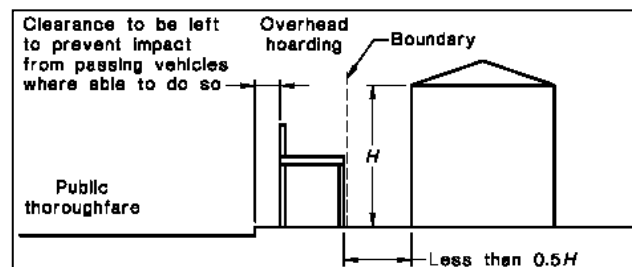


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either:

- 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/oheadprotstruts.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.4 Site Signs

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

Clause 98A of the *Regulation* provides:

Erection of signs

- For the purposes of section 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.5 Toilet Facilities

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

- a) must be a standard flushing toilet, and
- b) must be connected to a public sewer, or

- c) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the council, or
- d) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the council.

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

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

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

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

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

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

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

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

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

- Unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- Given at least 2 days' notice to the council of the person's intention to commence the erection of the building.

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

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

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

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

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

D.7 Notification of Home Building Act 1989 requirements

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

D.8 Dilapidation Reports for existing buildings

Dilapidation surveys must be conducted and dilapidation reports prepared by a *professional engineer* (structural) of all buildings /structures within the likely "zone of influence" of any

excavation, dewatering and/or construction induced vibration. These properties must include (but is not limited to):

- 10 Queens Avenue
- 22B Vaocluse Road including the existing boundary retaining wall to the common boundary between 22B Vaocluse Road and the subject sites
- 1 Little Queens Lane

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.9 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.10 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.

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.11 Construction Management Plan

As a result of the site constraints, limited space and access a Construction Management Plan (CMP) is to be submitted to Council. Also, due to lack of on-street parking a Work Zone may be required during construction. The principal contractor or owner must submit an application for approval of the Construction Management Plan by Council’s Traffic Engineer and pay all fees associated with the application. The plan must be submitted as a self-contained document that outlines the nature of the construction project and as applicable, include the following information:-

- a) Detail the scope of the works to be completed including details of the various stages, e.g. Demolition, Excavation, Construction etc. and the duration of each stage.
- b) Identify local traffic routes to be used by construction vehicles.
- c) Identify ways to manage construction works to address impacts on local traffic routes.
- d) Identify other developments that may be occurring in the area and identify ways to minimise the cumulative traffic impact of these developments. Should other developments be occurring in close proximity (500m or in the same street) to the subject site, the developer/builder is to liaise fortnightly with the other developers/builders undertaking work in the area in order to minimise the cumulative traffic and parking impacts of the developments.
- e) Detail how construction workers will travel to and from the site and parking arrangements for those that drive.
- f) Identify any proposed road closures, temporary traffic routes, loss of pedestrian or cyclist access or reversing manoeuvres onto a public road and provide Traffic Control Plans (TCPs) prepared by an accredited RMS Red or Orange card holder to manage these temporary changes.
- g) Detail the size (including dimensions), numbers and frequency of arrival of the construction vehicles that will service the site for each stage of works.
- h) Provide for the standing of vehicles during construction.
- i) If construction vehicles are to be accommodated on the site, provide a scaled drawing showing where these vehicles will stand and the vehicle swept path to show that these vehicles can access and egress the site in a forward direction (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
- j) If trucks are to be accommodated on Council property, provide a scaled drawing showing the location of any proposed Works Zone (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
- k) Show the location of any site sheds and any anticipated use of cranes and concrete pumps and identify the relevant permits that will be required.

- l) If a crane/s are to be accommodated on site, detail how the crane/s will be erected and removed, including the location, number and size of vehicles involved in the erection/removal of the crane/s, the duration of the operation and the proposed day and times, any full or partial road closures required to erect or remove the crane/s and appropriate Traffic Control Plans (TCPs) prepared by an approved RMS Red or Orange Card holder.
- m) Make provision for all materials, plant, etc. to be stored within the development site at all times during construction.
- n) State that any oversized vehicles proposed to operate on Council property (including Council approved Works Zones) will attain a Permit to Stand Plant on each occasion (Note: Oversized vehicles are vehicles longer than 7.5m or heavier than 4.5T.
- o) Show the location of any proposed excavation and estimated volumes.
- p) When excavation works are to be undertaken on school days, all vehicular movements associated with this work shall only be undertaken between the hours of 9.30am and 2.30pm, in order to minimise disruption to the traffic network during school pick up and drop off times.
- q) Show the location of all Tree Protection (Exclusion) zones (Note: storage of building materials or access through Reserve will not be permitted without prior approval by Council).

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

D.12 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.

E. Conditions which must be satisfied during any development work

E.1 Heritage training of foremen, tradesmen/ work related staff

All conservation works to be undertaken to the heritage item 'House and interiors, front fencing' at 6 Queens Avenue shall be in accordance with the Conservation Works Schedule outlined in Appendix A of the Conservation Management Strategy by Urbis, dated 15 November 2016.

E.2 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.3 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.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 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 meaning 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

E.12 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.13 Hours of Work –Amenity of the neighbourhood

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

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

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

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

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

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

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

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

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

E.14 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 in bags before placing into waste or skip bins.
- e) All waste and skip bins being kept covered when not being filled or emptied.
- f) The surface of excavation work being kept wet to minimise dust.
- g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

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

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

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

E.15 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.16 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.17 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.18 Site waste minimisation and management – Demolition

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

- a) 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)
- b) Provide separate collection bins and/or areas for the storage of residual waste
- c) Clearly ‘signpost’ the purpose and content of the bins and/or storage areas
- d) Implement measures to prevent damage by the elements, odour, health risks and windborne litter
- e) Minimise site disturbance, limiting unnecessary excavation

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 land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.

E.19 Site waste minimisation and management – Construction

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

- a) Arrange for the delivery of materials so that materials are delivered ‘as needed’ to prevent the degradation of materials through weathering and moisture damage
- b) Consider organising to return excess materials to the supplier or manufacturer
- c) Allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation)
- d) Clearly ‘signpost’ the purpose and content of the storage areas
- e) 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.
- f) Promote separate collection bins or areas for the storage of residual waste
- g) implement measures to prevent damage by the elements, odour and health risks, and windborne litter
- h) Minimise site disturbance and limit unnecessary excavation
- i) Ensure that all waste is transported to a place that can lawfully be used as a waste facility
- j) 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.

E.20 Classification of Hazardous Waste

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

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

E.21 Disposal of Asbestos and Hazardous Waste

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

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

E.22 Asbestos Removal Signage

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

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

E.23 Notification of Asbestos Removal

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

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

E.24 Disposal of soils and waste materials

Any disposal of soils and waste materials from the site shall be assessed against the NSW Department of Environment & Climate Change (DECC) 'Waste Classification Guidelines 2008, Revision 2009'; the Protection of the Environment Operations Act 1997 and the Protection of the Environment Operations Amendment (Scheduled Activities and Waste) Regulation 2008.

E.25 Swimming and Spa Pools – Temporary Child Resistant Barriers and other matters

Temporary child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and Building Code of Australia where any swimming pool or spa pool, as defined by the *Swimming Pools Act 1992*, contains more than 300mm in depth of water at any time. Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia as soon as practical.

Backwash and any temporary dewatering from any swimming pool or spa pool as defined by the *Swimming Pools Act 1992* must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

Note: This condition does not prevent Council from issuing an order pursuant to section 23 of the *Swimming Pool Act 1992* or taking such further action as necessary for a breach of this condition or the *Swimming Pools Act 1992*.

E.26 Tree Preservation

All persons must comply with Council's Development Control Plan (DCP) 2015, Tree Management Chapter E3 other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements

- a) There shall be no excavation or work within a Tree Protection Zone (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*.

E.27 Replacement/Supplementary trees which must be planted

Any replacement or supplementary tree shall be grown in accordance with Tree stock for landscape use (AS 2303:2015). The replacement tree shall be planted in *deep soil landscaped area* and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council's Tree Preservation Order, it must be replaced with another of the same species which complies with the criteria outlined below.

Species/Type	Planting/Location	Container Size/Size of Tree (at planting)	Minimum Dimensions at Maturity (m)
1 x <i>Acer palmatum</i> (Japanese Maple)	In accordance with Landscape Plan No. s LP02-3616 issue 01/B, designed by William Dangar, dated November 2016	400 litre	5 x 3
1 x <i>Jacaranda mimosifolia</i> (Jacaranda)		400 litre	8 x 8
2 x <i>Magnolia grandiflora</i> 'Exmouth' (Bull Bay Magnolia)		1000 litre each	8 x 5 each
1 x <i>Zelkova serrata</i> (Japanese Elm)		1000 litre	10 x 5

The project arborist shall document compliance with the above condition.

E.28 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.29 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.

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 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.3 Amenity Landscaping

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

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

F.4 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.5 Swimming and Spa Pools – Permanent Child Resistant Barriers and other matters

Prior to filling any swimming pool, as defined by the *Swimming Pools Act 1992*:

- a) Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia.
- b) The swimming pool must be registered in accordance with Section 30B of the *Swimming Pools Act 1992* on the NSW Government Swimming Pool Register at www.swimmingpoolregister.nsw.gov.au.
- c) The *Principal Contractor* or *owner* must either obtain a 'Certificate of Compliance' issued pursuant to Section 22D of the *Swimming Pools Act 1992* or an appropriate Occupation Certificate authorising use of the swimming pool.
- d) Public Pools must comply with the NSW Health Public Swimming Pool and Spa Pool Guidelines in force at that time and private pools are encouraged to comply with the same standards as applicable.
- e) Water recirculation and filtration systems must be installed in compliance with AS 1926.3-2003:Swimming pool safety - Water recirculation and filtration systems.

Backwash must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996:

- a) Water recirculation and filtration systems must be connected to the electricity supply by a timer that limits the systems operation such that it does not operate:
- b) Before 8 am or after 8 pm on any Sunday or public holiday or before 7 am or after 8 pm on any other day.

Note: 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>

F.6 Consolidation of allotments

The allotments known as 6 & 8 Queens Avenue are to be consolidated to form one allotment. The plan of the consolidated allotments is to be prepared by a registered surveyor and registered with Land and Property Information (NSW). Evidence of registration is to be submitted to Council's satisfaction prior to the issue of an Occupation Certificate.

G. Conditions which must be satisfied prior to the issue of any subdivision certificate

Nil

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

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

All BASIX commitments must be effected in accordance with the BASIX Certificate Nos. A262650 & 732469S.

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

Note: Security held by Council pursuant to section 80A(6) of the Act will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the *Final Occupation Certificate* to Council. This form can be downloaded from Council's website www.woollahra.nsw.gov.au or obtained from Council's customer service centre.

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 Rainwater Tanks and basement pump-out system;
- 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.

- 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 Rainwater Tanks, 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 and Property Information.

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

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

H.4 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.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 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate Nos. A262650 & 732469S.

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.2 Noise from mechanical plant and equipment

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

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

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

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

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

ISBN 0 7313 2715 2, dated January 2000, and

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

ISBN 1741370671, dated December 2004.

I.3 Outdoor lighting – Residential

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

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

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

I.4 Swimming and Spa Pools – Maintenance

Swimming and Spa Pools must be maintained:

- a) In compliance with the *Swimming Pools Act* 1992 and the Building Code of Australia with regard to the provision of child-resistant barriers and resuscitation signs;
- b) In compliance with the NSW Health “*Public Swimming Pool and Spa Pool Guidelines*” in force at that time. Private pools are encouraged to comply with the same standards as applicable;
- c) In compliance with AS 1926.3-2003:Swimming pool safety - Water recirculation and filtration systems ;
- d) With backwash being discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996, and
- e) With a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
 - Before 8 am or after 8 pm on any Sunday or public holiday, or
 - Before 7 am or after 8 pm on any other day.

Note: Child-resistant barriers, resuscitation signs, recirculation and filtration systems and controls systems require regular maintenance to ensure that life safety, health and amenity standards are maintained.

Note: The NSW Health Public Swimming 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 On-going maintenance of the Rainwater Tank and Pump-out 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 (d) at the Owners expense;
- f) Not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly;
- g) Permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant;
- h) Comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time reasonably stated in the notice;
- i) Where the Owner fails to comply with the Owner's obligations under this covenant, permit 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.

Note: 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.

J. Miscellaneous Conditions

Nil

K. Advisings

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

Failure to comply with this development consent and any condition of this consent is a **criminal offence**. Failure to comply with other environmental laws is also a criminal offence. Where there is any breach Council may without any further warning:

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

Warnings as to potential maximum penalties

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

Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the

payments of its costs beyond any penalty or remedy the Court may order. his 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.

K.2 Dial before you dig

The *principal contractor*, *owner builder* or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and Dial 1100 Before You Dig or visit www.dialbeforeyoudig.com.au. When you contact Dial Before You Dig, you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation.

K.3 Builders Licences and Owner Builders Permits

Section 81A of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appoint a *principal contractor* for residential building work who must be the holder of a contractor licence. Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder): <http://www.dft.nsw.gov.au/building.html>. The Owner(s) must appoint the PCA. The PCA must check that Home Building Act insurance is in place before the commencement of building work. The Principal Contractor (Builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the Home Building Act 1989 for the residential building work.

K.4 Building Standards - Guide to Standards and Tolerances

The PCA does not undertake detailed quality control inspections and the role of the PCA is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia. Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the "Guide to Standards and Tolerances©" ISBN 0 7347 6010 8 are achieved. The quality of any development is a function of the quality of the *principal contractor's* or *owner builder's* supervision of individual contractors and trades on a daily basis during the development. The PCA does not undertake this role. The NSW Office of Fair Trading have published a "Guide to Standards and Tolerances©" ISBN 0 7347 6010 8. The guide can be obtained from the Office of Fair Trading by calling 13 32 20 or by Fax: 9619 8618 or by post to: Marketing Branch, PO Box 972, Parramatta NSW 2124. The Guide can be down loaded from: <http://www.fairtrading.nsw.gov.au/pdfs/corporate/publications/dft242.pdf>

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

K.5 Workcover requirements

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

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

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

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

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

K.6 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.

K.7 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/>.

K.8 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 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>

K.9 Pruning or Removing a Tree Growing on Private Property

Woollahra Municipal Council's *Tree Preservation Order* 2006 (TPO) may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment. Before you prune or remove a tree, make sure you read all relevant conditions. You can obtain a copy of the TPO from Council's website www.woollahra.nsw.gov.au or you may contact Council on 9391-7000 for further advice.

K.10 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*".

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

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

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

Note: When 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.

K.11 Dilapidation Report

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

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

K.12 Encroachments

It is noted that there is an encroachment by the building over Council's road reserve. While in this case the encroachments are only minor, Council may at some future date require its removal or formalisation.

ANNEXURES

1. Plans, elevations and sections
2. Landscape plans
3. Development Engineer's referral response
4. Tree and Landscape Officer's referral response
5. Heritage Officer's referral response
6. Clause 4.6 written request to vary Council's 9.5m height standard