

Annexure 8

Ausgrid Referral Response

TELEPHONE: (02) 8569 6584
EMAIL: development@ausgrid.com.au
REFERENCE: TRIM 2017/47/24

ATTN: D Lukas
Assessment Officer
PO Box 61
Double Bay NSW 1360

570 George Street
Sydney NSW 2000
All mail to GPO Box 4009
Sydney NSW 2001
T +61 2 131 525
F +61 2 9269 2830
www.ausgrid.com.au

Re: DA 359/2017/1 - 2 Guilfoyle Avenue Double Bay - Mixed Residential/Commercial Demolition of existing structures and construction of a seven storey mixed use development containing 39 residential units (5 x studios, 12 x 1 bed, 18 x 2 bed & 4 x 3 bed), 3 ground level retail spaces (proposed hours of 6am-10pm Mon-Sat and 7am-10pm Sun) with ground level parking (9 cars) and a basement car park accessed by a car lift (24 cars) and the removal of a tree at the rear of 28 Bay Street.

I refer to Woollahra Municipal Council development application DA 359/2017/1.

This letter is Ausgrid's response under clause 45(2) of the State Environmental planning Policy (Infrastructure) 2007.

The assessment and evaluation of environmental impacts for a new development consent (or where a development consent is modified) is undertaken in accordance with requirements of Section 79C of the Environmental Planning and Assessment Act 1979. One of the obligations upon consent authorities, such as local councils, is to consider the suitability of the site for the development which can include a consideration of whether the proposal is compatible with the surrounding land uses and the existing environment.

In this regard, Ausgrid requires that due consideration be given to the compatibility of proposed development with existing Ausgrid infrastructure, particularly in relation to risks of electrocution, fire risks, Electric & Magnetic Fields (EMFs), noise, visual amenity and other matters that may impact on Ausgrid or the development.

With Regard to: DA359/2017/1 - Mixed Residential/Commercial Demolition of existing structures and construction of a seven storey mixed use development containing 39 residential units (5 x studios, 12 x 1 bed, 18 x 2 bed & 4 x 3 bed), 3 ground level retail spaces (proposed hours of 6am-10pm Mon-Sat and 7am-10pm Sun) with ground level parking (9 cars) and a basement car park accessed by a car lift (24 cars) and the removal of a tree at the rear of 28 Bay Street. at 2 Guilfoyle Avenue Double Bay

- DA3101 - Section 2 Issue E (25/11/16)

Ausgrid consents to the above mentioned development subject to the following conditions:-

Supply of Electricity

It is recommended for the nominated electrical consultant/contractor to provide a preliminary enquiry to Ausgrid to obtain advice for the connection of the proposed development to the adjacent electricity network infrastructure. An assessment will be carried out based on the enquiry which may include whether or not:

- The existing network can support the expected electrical load of the development
- A substation may be required on-site, either a pad mount kiosk or chamber style and;
- site conditions or other issues that may impact on the method of supply.

Please direct the developer to Ausgrid's website, www.ausgrid.com.au about how to connect to Ausgrid's network.

Conduit Installation

The need for additional electricity conduits in the footway adjacent to the development will be assessed and documented in Ausgrid's Design Information, used to prepare the connection project design.

Streetlighting

The developer is to consider the impact that existing streetlighting and any future replacement streetlighting and maintenance may have on the development. Should the developer determine that any existing streetlighting may impact the development, the developer should either review the development design, particular the placement of windows, or discuss with Ausgrid the options for relocating the streetlighting. The relocating of any streetlighting will generally be at the developers cost. In many cases is not possible to relocate streetlighting due to its strategic positioning.

Service Mains

It appears the existing underground electricity service mains, that supply the subject property, may not have sufficient clearance to the proposed construction as per the requirements of "The Installation and Service Rules of NSW".

It is recommended that the developer engage a Level 2 Accredited Service Provider (ASP) Electrician to ensure that the installation will comply with the Service Rules.

Proximity to Existing Network Assets**Underground Cables**

There are existing underground electricity network assets in Guilfoyle avenue and Bay street.

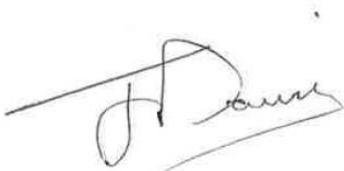
Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.

Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

Safework Australia – Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables.

Please do not hesitate to contact John Davis on Ph: (02) 8569 6584 (please quote our ref: Trim 2017/47/24) should you require any further information.

Regards, John



John Davis
Asset Protection Officer
Ausgrid - Field Services
Ph: (02) 8569 6584

Annexure 9

WaterNSW Referral Response



PO Box 398, Parramatta NSW 2124
Level 14, 169 Macquarie Street
Parramatta NSW 2150
www.watarnsw.com.au
ABN 21 147 934 787

Contact Richard Meares
Phone 02 9865 2324
Email richard.mearesl@watarnsw.com.au

Nick Economou
Manager – Development Control
Woollahra Municipal Council
PO Box 61
Double Bay NSW 1360

Our ref **F2017/5616**
Your ref DA 359/2017/1

Date 1 November 2017

Via email: records@woollahra.nsw.gov.au

Dear Nick,

Integrated Development referral under s.91A of the *Environmental Planning and Assessment Act 1979* for 30-36 Bay Road Double Bay NSW

Reference is made to your request for a response in relation to the proposed development described as Lot 1 DP66867 & Lot 1 DP82635, 30-36 Bay Road Double Bay and identified as DA359/2017/1.

WaterNSW has determined that the proposed development will encounter groundwater during the excavation process, and is subject to a Water Supply Work Approval under the *Water Management Act 2000* for dewatering during the construction phase. If there is ongoing take of groundwater during the post construction phase, a Water Supply Work Approval and a Water Access Licence will be required. This determination is subject to appropriate construction methods to be employed to minimise volume of groundwater take during the construction phase. WaterNSW provides General Terms of Approval attached.

Please note: From 1 July 2016, many functions previously undertaken by DPI Water have transferred to WaterNSW. This includes Integrated Development referral under Section 91A of the *Environmental Planning and Assessment Act 1979* that has groundwater implications. Please ensure that any future groundwater matters are referred to Water Regulation (Coastal), Customer and Community, WaterNSW, PO Box 398, Parramatta NSW 2124.

For further information in regards to making an application, and information required for the Approval information licensing requirements, including the preparation of a dewatering management plan, please contact Richard Meares, Water Regulation Officer on (02) 9865 2324, or by email to richard.meares@watarnsw.com.au.

Yours Sincerely,

Per: K Izzard

Richard Meares
Water Regulation Officer
Coastal (Parramatta)
Water NSW

DA reference	DA359/2017/1
Proponent	Anka Double Bay Pty Ltd
Specified location	Lot 1 DP66867 & Lot 1 DP82635
Proposed development	Demolition of existing structures, construction of 39 Units and basement car park
Water sharing plan	Greater Metropolitan Region Groundwater Sources WSP 2011
Water source	Sydney Basin Central Groundwater Source
Water management zone	N/A

General Terms of Approval

1. A Water Supply Work Approval from WaterNSW must be obtained prior to commencing dewatering activity on the proposed site. Please complete an [Application for approval for water supply works, and/or water use](#).
2. An application for a Water Supply Works Approval will only be accepted upon receipt of supporting documentation, and payment of the applicable fee (see Application fees for [New or amended Works and/or Use Approvals](#)). The information required for the processing of the water supply work application may include preparation of a dewatering management plan. Please refer to checklist attached.
3. If approved, the Approval will be issued for a period of up to 24 months to cover the dewatering requirements during the construction phase. It will include conditions to ensure that impacts are acceptable and that adequate monitoring and reporting procedures are carried out. The Approval will be issued subject to the proponent meeting requirements of other agencies and consent authorities. For example, an authorisation by either Sydney Water or the local Council, depending where the water will be discharged. If contaminants are likely, or are found to be present in groundwater, and are being discharged to stormwater, including high salinities, a discharge licence under the *Protection of the Environment Operations Act 1997 (NSW)* may also be required.
4. WaterNSW prefers "tanking" (ie. total water proofing below the seasonal high water table) of basement excavations, and avoids the ongoing extraction of groundwater after the initial construction phase. It is also advised to adopt measures to facilitate movement of groundwater post construction (eg. a drainage blanket behind the water-proof membrane).
5. If the basement is not "tanked", the proponent will require a Water Access Licence (WAL) and need to acquire groundwater entitlements equivalent to the yearly ongoing take of groundwater. Please note: Acquiring groundwater entitlements could be difficult, and may cause delay in project completion. If a WAL is required, please complete an [Application for a new water access licence with a zero share component](#).

DA reference	
Proponent	
Specified location	
Proposed development	

Please note: The following information is considered essential to allow Water NSW to assess approval applications. The information must be provided along with the approval application prior to commencement of works. Your application will not be accepted until the following requirements have been satisfactorily addressed and received by this office.

- ☐ 1. Application for an Approval under the Water Management Act 2000.
- ☐ 2. Application fee | \$1,076.03 (low risk approvals); or \$1,990.63 (where details assessment required). Refer to [Application fees for water access licences, water supply work and use approvals and dealings](#) for definitions.
- ☐ 3. Written authorisation for the disposal of the extracted groundwater (obtained from Council or Sydney Water)
- ☐ 4. Copy of a valid planning consent for the project and architectural or survey drawings that show the plan and section of the subsurface excavation including relative levels (AHD) and the groundwater table
- 5. A Dewatering Management Plan which clearly and concisely sets out the following:**
 - ☐ 5.1. Current groundwater levels, preferably based on at least three repeat measurements from at least three monitoring bores and should be used to develop a water table map for the site and its near environs, be accompanied by an interpretation of the groundwater flow direction from these data, and an assessment of the likely level to which groundwater might naturally rise during the life of the building.
Relevant report & Page No: _____
 - ☐ 5.2. Predictions of total volume of groundwater to be extracted at the property – the method of calculation and the basis for parameter estimates and any assumptions used to derive the volume are to be clearly documented
Relevant report & Page No: _____
 - ☐ 5.3. Predicted duration of dewatering at the property, noting that temporary dewatering approvals are generally issued for no more than 12 months
Relevant report & Page No: _____
 - ☐ 5.4. Details of how dewatering volumes are to be measured, eg. by calibrated flow meter or other suitable method, and of the maximum depth of the proposed dewatering system
Relevant report & Page No: _____
 - ☐ 5.5. Details of any predicted impacts or particular issues, eg. proximity of groundwater dependent ecosystems springs; or water supply losses by neighbouring groundwater users potential subsidence impacts on nearby structures or infrastructure
Relevant report & Page No: _____
 - ☐ 5.6. Details of monitoring proposed during the dewatering program. These should be designed to inform and facilitate the protection of any identified potential impacts
Relevant report & Page No: _____
 - ☐ 5.7. Details of ambient groundwater quality conditions beneath the property and of any proposed treatment to be applied to pumped water prior to disposal – at a minimum, treatment must be undertaken to remove contaminants, manage pH, reduce suspended solids and turbidity to acceptable levels and ensure that dissolved oxygen levels are compatible with ambient quality requirements in receiving waters. Groundwater cannot be re-injected into an aquifer without the specific approval of, and licensing by, DPI Water
Relevant report & Page No: _____
 - ☐ 5.8. Details of how reporting will occur during and following the dewatering program, to confirm that predicted quantities and quality objectives were met
Relevant report & Page No: _____
 - ☐ 5.9. Description of the method of dewatering and related construction including any proposal to use temporary piling or support walls and the relative depths thereof
Relevant report & Page No: _____

Annexure 10

Submissions

Salutation	FirstLastName	Company	Address	SuburbStatePCode
Sir/Madam	Anka Double Bay Pty Ltd	PO Box 727	EDGECLIFF NSW 2027	
Sir/Madam	Anka Double Bay Pty Ltd	C/- Knight Frank	GPO Box 187	SYDNEY NSW 2001
Madam	Ms Janine Adams		janinea@bigpond.net.au	
Sir/Madam	Mr Charles & Mrs Christine Biscoe		58 Cross Street	DOUBLE BAY NSW 2028 biscoe@bigpond.net.au
Sir	Mr Victor Grynberg		37 Streatfield Road	Bellevue Hill NSW 2023 victor@vag.net.au
Sir/Madam	Dr & Mrs Peter Conrad		2/61-63 Bay Street	DOUBLE BAY NSW 2028 pconrad2@bigpond.net.au
Sir	Mr Tom Breuer		85d Victoria Road	BELLEVUE HILL NSW 2023 tommyb@bigpond.net.au
Sir	Mr GEOFFREY COWEN		Unit 1, 1A Rose Bay Avenue	BELLEVUE HILL NSW 2023 bcspl@BigPond.net.au
Sir	Mr Byron Rose		Suites 10-11, 19-27 Cross Street	DOUBLE BAY NSW 2028 Kim@roseandjones.com.au
Sir	Tri-Anta Pty Ltd		PO Box 1077	DOUBLE BAY NSW 1360 Kim@roseandjones.com.au
Sir	Mr Peter Strasser		6/132 Victoria Road	BELLEVUE HILL NSW 2023
Sir	Mr George Bloomfield		Suite 102, 30 Bay Street	DOUBLE BAY NSW 2028 g.bloomfield@bigpond.com
Sir	Mr R D Solomon		5H/2-22 Knox Street	DOUBLE BAY NSW 2028 rs@primarymarkets.com
Sir	Mr Gavin Krawchuk		252 Storey Street	MAROUBRA NSW 2035 Gavin@lovetodream.com.au
Sir	Mr Vaughan Blank	STM123 N018 PTY LTD	419/421 & 423/431 New South Head Road	DOUBLE BAY NSW 2028 vaughan@stmrealty.com.au
Madam	Ms Delphine Kuiken		Unit 20/282 New South Head Road	Double Bay NSW 2028 delphinek@ozemail.com.au
Madam	Ms Michelle Fischl		2 Parsley Road	VAUCLUSE NSW 2030

				mfischl@toga.com.au
Madam	Ms Amber Schwarz		18 Drumalbyn Road	BELLEVUE HILL NSW 2023 amber.rr@bigpond.net.au
Sir	Mr Luke Veron	Pilmyth Pty Ltd	Level 1 23-25 Bay Street	DOUBLE BAY NSW 2028
Sir	Mr Peter D White	Klefire Pty Ltd	5 Bay Street	Double Bay NSW 2028
Sir	Mr Andrew Veron		PO Box 525	DOUBLE BAYNSW 1360
Sir	Mr Michael Schiffer	21 Espresso	21 Knox Street	DOUBLE BAY NSW 2028
Madam	Mrs Rochelle Solsky		48 Streatfield Road	BELLEVUE HILL NSW 2023 rochcad@me.com
Sir	Tom Curtis	Crown Capital Investments Pty Ltd	Suite 1, Level 1, 9-11 Knox Street	DOUBLE BAY NSW 2028
Madam	Mei Ong		68 Cross Street	DOUBLE BAY NSW 2028 ongmeilin@yahoo.com
Madam	Ruth Stux		7C/22 Know Street	DOUBLE BAY NSW 2028
Madam	Steven Stux		7C/22 Know Street	DOUBLE BAY NSW 2028
Sir/Madam	Alex Collins	Level 1, Suite 2	24 Bay Street	DOUBLE BAY NSW 2028
Sir	Philip Jacobson		PO Box 1710	DOUBLE BAY NSW 1360
Madam	Helen McCathie		6/11 Guilfoyle Avenue	DOUBLE BAY NSW 2028
Madam	Sara Jose		290 New South Head Road	DOUBLE BAY NSW 2028
Sir	Russell Lyons		47 Bulkara Road	BELLEVUE HILL NSW 2023
Sir	Robert Simons		10A William Street	DOUBLE BAY NSW 2028
Madam	Ms Justine Earl-Smith	justineearlsmith@me.com		
Sir/Madam	Catalina & Lucio Febo		32 Ocean Street	DOUBLE BAY NSW 2028
Sir	S. Michaelis		PO Box 644	FOREST VILLE NSW 2087
Madam	M A Simons		10a William Street	DOUBLE BAY NSW 2028
Madam/Sir	Mrs Maria & Mr Kai Jacobsen		60 Cross Street	DOUBLE BAY NSW 2028 kai@designings.com.au
Sir	Mr Wayne Penn		49 Bream Street	COOGEE NSW 2034 Wpenn@ppgaust.com.au
Sir	Mr Stanley Hurwitz		18 Kobada Road	Dover Heights NSW 2030 stanley.hurwitz@optusnet.com.au
Sir	Mr Warren Jacobson		22 Lyons Street	warrenxjacobson@gmail.com

Sir	Mr Bob Guth		303-304A New South Head Road	bobguth@bradfieldclary.com.au
Sir	Mr Malcolm Young	Double Bay Residents Association Inc.	PO BOX 1684	DOUBLE BAY NSW 1360 malcolmdyoung@bigpond.com
Sir	Mr Michael Filler		7 Warren Road	BELLEVUE HILL NSW 2023 Michael@teamevent.com.au
Sir	Mr Gregory Ockenden	gregoryockenden@gmail.com		
Sir	Wes Gardener	Roche Group Pty Ltd	PO Box 325	DOUBLE BAY NSW 1360
Sir	Philip Moses		16b Ocean Avenue	DOUBLE BAY NSW 2028
Madam	Donna Moses		16b Ocean Avenue	DOUBLE BAY NSW 2028
Sir/Madam	John & Denise Joyce		27/337 New South Head Road	DOUBLE BAY NSW 2028 Jjoyce1940@tpg.com.au
Sir/Madam	Peter & Megan Benjamin		5/337 New South Head Road	DOUBLE BAY NSW 2028 pbenj@bigpond.com
Sir/Madam	Shirley & Robert Silverton	robert@k2r.com.au		
Madam	Deborah Terley	deborah@positionreality.com.au		
Madam	Dr Yvonne White	drywhite@bigpond.com		
Sir/Madam	Robin & Henri Aram	randharam@gmail.com		
Sir	Matthew Levins		PO Box 261	CROWS NEST NSW 1585 mslevins@yahoo.com
Sir	David Harrington		5B/2-22 Knox Street	DOUBLE BAY NSW 2028 David.Harrington@ia.g.com.au
Sir	Anthony Tregoning		12 Pine Hill Avenue	DOUBLE BAY NSW 2028 a.tregoning@fcr.com.au
Madam	Susan Kater		14/337 New South Head Road	DOUBLE BAY NSW 2028
Madam	Sharon Lavin		16/142 Old South Head Road	BELLEVUE HILL NSW 2023 sharonlavin@hotmail.com
Madam	Sarah Granger		41/18 Bay Street	Thegrangers6@bigpond.com
Madam	Eva Santo		8/337 New South Head Road	DOUBLE BAY NSW 2028 eva@spatours.com.au
Sir/Madam	Robert & Paula McLean	Robertmclean1@me.com		
Sir	Andrew Boyarsky		75 Bay Street	DOUBLE BAY NSW 2028

Sir	Mr Andy Mercieca	Naked Foods	Kiaora Place, L13/415 New South Head Road	DOUBLE BAY NSW 2028
Sir/Madam	Mrs Agnes Martin & Mr Tom Ecker		The Chancellor, 38 Bay Street	DOUBLE BAY NSW 2028 tomecker@bigpond.com
Madam	Mrs Mary E. Dunlop		Unit 1, 8 Guilfoyle Avenue	DOUBLE BAY NSW 2028
Sir	Mr Roy Pipon		45 Knox Street	DOUBLE BAY NSW 2028
Sir	Mr Tom Pongrass		7F 2-22 Knox Street	tom.pongrass@gmail.com
Sir	Mr Peter Andrews		49-53 Bay Street	DOUBLE BAY NSW 2028 gwhiteman@raywhite.com
Sir	Mr Kevin Smith		43 Bay Street	DOUBLE BAY NSW 2028 gwhiteman@raywhite.com
Madam	Ms Laura Reid	on behalf of Mr Ezekiel Solomon	5A, 2-22 Knox Street	DOUBLE BAY NSW 2028 laura@mersonn.com.au
Madam	Ms Vera Boyarsky		7a, 2-22 Knox Street	DOUBLE BAY NSW 2028 sharonl@ankaproperty.com
Sir	Mr Rob Turchini		L18, 141 Walker Street	North Sydney NSW 2060 JFitzgerald@loftexpressproperty.com
Madam	Erika Kennedy		Apartment 1, 38 Bay Street	DOUBLE BAY NSW 2028 ebken99@outlook.com
Sir	Scott Lockrey	Planning & Development Solutions Pty	slockrey@lpds.com.au	
Sir/Madam	Anthony and Anna Kwok		7/337 New South Head Road	DOUBLE BAY NSW 2028 akwok2838@gmail.com b
Madam	Barbara Fischer		25/337 New South Head Road	DOUBLE BAY NSW 2028 barby@fischerconsulting.com.au
Madam	Kim Lee		41 Knox Street	DOUBLE BAY NSW 2028
Sir	Geoffrey C Frumar		Unit 4, Duetto, 8 Guilfoyle Avenue	DOUBLE BAY NSW 2028 frulaw@outlook.com
Madam	Danielle Brossard		4 Drumalbyn Road	BELLEVUE HILL NSW 2023 daniellebrossard7@gmail.com
Sir	Michael Fischer		Unit 25 / 337 New South Head Road	DOUBLE BAY NSW 2028

				michael@fischerconsulting.com.au
Madam	Michelle Silberg		5 Burrabirra Road	VAUCLUSE NSW 2030
Sir/Madam	Alex Oliver		3 Henrietta Street	DOUBLE BAY NSW 2028 alexoliver@bigpond.com
Sir	Nicholas Gazal		6A, 2-22 Knox Street	DOUBLE BAY NSW 2028 NicholasG@gazcorp.com
Madam	Ashley Bierman	Ray White Double Bay	356 New South Head Road	DOUBLE BAY NSW 20028 abierman@raywhite.com
Sir	Edward Malouf	Royal Hotels Admin Group	PO Box 1739	DOUBLE BAY NSW 2028 edward@royalhotels.com.au
Madam	Eva Santo		8/337 New South Head Road	DOUBLE BAY NSW 2028 eva@spatours.com.au
Madam	Amanda Stewart		343a Edgecliff Road	Edgecliff NSW 2027 acss@ozemail.com.au

Annexure 11

Conditions Without Prejudice

A. General Conditions

A.1 Conditions

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

A.2 Definitions

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

Applicant means the applicant for this Consent.

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

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

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

Council means Woollahra Municipal Council

Court means the Land and Environment Court

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

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

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

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

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

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

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

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

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

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

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

Site means the land being developed subject to this consent.

WLEP 1995 means *Woollahra Local Environmental Plan 1995*

WLEP 2014 means *Woollahra Local Environmental Plan 2014*

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

Reference	Description	Author/Drawn	Date(s)
160279-DA: 0000F, 3000I, 3001H, 3002H, 3100F & 3101F; and, DA: 1000C, 1110E, 2000J, 2002G, 2003G, 2006H, 2007I & 2008I; and, DA: 2001O	Architectural Plans	Group GSA Pty Ltd	31.07.2017; and, 27.07.2017; and, 06.10.2017
819723M_03	BASIX Certificate	NSW Department of Planning and Infrastructure	02.08.2017
16-0824A; 17-0480B; 17-0840C	Thermal Comfort & BASIX Assessment	Efficient Living Pty Ltd	16.05.2017; 26.05.2017; 02.08.2017
160279-L: 7001B & 7002B	Landscape Plan	Group GSA Pty Ltd	08.03.2017
30/BAY/AIA/A	Arboricultural Impact Assessment & Tree Protection Specification	tree iQ	15.03.2017
160279-DA: 6002B	Materials Board	Group GSA Pty Ltd	27.07.2017
160049: C2.01 Revision C	Stormwater Drainage Plan	SCP Consulting Pty Ltd	12.05.2017
-	Waste Management Report	The Mack Group	16.05.201
10318/2	Traffic Report	Colston Budd Rogers & Kafes Pty Ltd	06.03.2017
10318/2	Transport Report	Colston Budd Rogers & Kafes Pty Ltd	06.03.2017
-	Preliminary Construction Management Plan	ANKA Double Bay Pty Ltd	May 2017
85575.00R.002.Rev0	Groundwater Monitoring	Douglass Partners Pty Ltd	29.05.2017
85575.00R.002.Rev01	Groundwater Monitoring Addendum	Douglass Partners Pty Ltd	07.10.2016
-	Civil Engineering Design	SCP Consulting Pty Ltd	01.05.201
-	Site Waste Minimisation & Management Plan	ANKA Double Bay Pty Ltd	25.07.2017
85575.01.R.001.Rev1 PSI	Preliminary Site Investigation for Contamination	Douglass Partners Pty Ltd	13.04.2017
85575.01.R.001.Rev1	Geotechnical and Hydrogeological Investigation	Douglass Partners Pty Ltd	06.04.2017
S17270 Revision 04	Ecological Sustainable Development Plan	Floth Sustainable Building Consultants	31.07.2017
20161365.1/1409A/R0/BW	Acoustic Assessment	Acoustic Logic	14.09.2016
85575.01.R.001.Rev0	Acid Sulfate Soils Management Plan	Douglass Partners Pty Ltd	21.07.2017
MSA1486 Rev2	Accessibility Report	Matt Shuter & Associates	27.07.2017

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 General Terms of Approval (Water NSW)

WaterNSW provides the following General Terms of Approval:

- a) A Water Supply Work Approval from WaterNSW must be obtained prior to commencing dewatering activity on the proposed site. Please complete an Application for approval for water supply works, and/or water use.
- b) An application for a Water Supply Works Approval will only be accepted upon receipt of supporting documentation, and payment of the applicable fee (see Application fees for New or amended Works and/or Use Approvals). The information required for the processing of the water supply work application may include preparation of a dewatering management plan. Please refer to checklist attached
- c) If approved, the Approval will be issued for a period of up to 24 months to cover the dewatering requirements during the construction phase. It will include conditions to ensure that impacts are acceptable and that adequate monitoring and reporting procedures are carried out. The Approval will be issued subject to the proponent meeting requirements of other agencies and consent authorities. For example, an authorisation by either Sydney Water or the local Council, depending where the water will be discharged. If contaminants are likely, or are found to be present in groundwater, and are being discharged to stormwater, including high salinities, a discharge licence under the *Protection of the Environment Operations Act 1997 (NSW)* may also be required.
- d) WaterNSW prefers “tanking” (ie. total water proofing below the seasonal high water table) of basement excavations, and avoids the ongoing extraction of groundwater after the initial construction phase. It is also advised to adopt measures to facilitate movement of groundwater post construction (eg. a drainage blanket behind the water-proof membrane).
- e) If the basement is not “tanked”, the proponent will require a Water Access Licence (WAL) and need to acquire groundwater entitlements equivalent to the yearly ongoing take of groundwater. Please note: Acquiring groundwater entitlements could be difficult, and may cause delay in project completion. If a WAL is required, please complete an Application for a new water access licence with a zero share component.

Note: WaterNSW is a NSW Government agency: PO Box 398, Parramatta NSW 2124; Level 14, 169 Macquarie Street Parramatta NSW 2150; www.watarnsw.gov.au; Contact: Richard Meares; Phone 9865 2324; Email: Richard.mearesl@watarnsw.com.au; Reference No.F2017/5616

A.6 Ausgrid Conditions

Ausgrid provides the following conditions:

Supply of Electricity

- a) It is recommended for the nominated electrical consultant/contractor to provide a preliminary enquiry to Ausgrid to obtain advice for the connection of the proposed development to the adjacent electricity network infrastructure. An assessment will be carried out based on the enquiry which may include whether or not:
 - 1) The existing network can support the expected electrical load of the development
 - 2) A substation may be required on-site, either a pad mount kiosk or chamber style and;
 - 3) site conditions or other issues that may impact on the method of supply.

Please direct the developer to Ausgrid's website, www.ausgrid.com.au about how to connect to Ausgrid's network

Conduit Installation

- b) The need for additional electricity conduits in the footway adjacent to the development will be assessed and documented in Ausgrid's Design Information, used to prepare the connection project design

Streetlighting

- c) The developer is to consider the impact that existing streetlighting and any future replacement streetlighting and maintenance may have on the development. Should the developer determine that any existing streetlighting may impact the development, the developer should either review the development design, particular the placement of windows, or discuss with Ausgrid the options for relocating the streetlighting. The relocating of any streetlighting will generally be at the developers cost. In many cases it is not possible to relocate streetlighting due to its strategic positioning

Service Mains

- d) It appears the existing underground electricity service mains, that supply the subject property, may not have sufficient clearance to the proposed construction as per the requirements of *"The Installation and Service Rules of NSW"*. It is recommended that the developer engage a Level 2 Accredited Service Provider (ASP) Electrician to ensure that the installation will comply with the Service Rules

Proximity to Existing Network Assets (Underground Cables)

- e) There are existing underground electricity network assets in Guilfoyle Avenue and Bay Street.

Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.

Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

Safework Australia–Excavation Code of Practice, and Ausgrid’s Network Standard NS156 outlines the minimum requirements for working around Ausgrid’s underground cables.

Note: Contact John Davison Ph:(02)85696584 (Ref: Trim2017/47/24)

A.7 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 on Council land shall be retained

Council Ref No.	Species	Location	Dimension (metres)	Tree Value
3	<i>Ulmus parvifolia</i> (Chinese Elm)	Street tree on Bay Street (Refer to Appendix B <i>Tree Location Plan</i> of the submitted Tree IQ Arboricultural report)	9 x 6	\$ 7000
4	<i>Ulmus parvifolia</i> (Chinese Elm)	Street tree on Bay Street (Refer to Appendix B <i>Tree Location Plan</i> of the submitted Tree IQ Arboricultural report)	9 x 9	\$ 7000

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

- b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (metres)
4	<i>Corymbia citriodora</i> (Lemon scented Gum)	Within Royal Oak hotel property boundary (Refer to Appendix B <i>Tree Location Plan</i> of the submitted Tree IQ Arboricultural report)	17 x 11

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

- c) The following trees shall be pruned in accordance with *Australian Standard Pruning of Amenity Trees* (AS 4373) and *Workcover NSW Code of Practice Amenity Tree Industry*, to the minimum extent necessary to provide clearance to the new development:

Council Ref No.	Species	Location	Approved pruning (extent of pruning)
2	<i>Cinnamomum camphora</i> (Camphor laurel)	Within Royal Oak hotel property boundary. Refer to Appendix B <i>Tree Location Plan</i> of the submitted Tree IQ Arboricultural report.	Prune only those branches highlighted on Plate 4 of Page 15 and in accordance with section 3.4 of the submitted Tree IQ Arboricultural report.

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

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

B.1 Construction Certificate required prior to any demolition

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

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

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

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

The photographic archival recording is to be submitted in a digital format and is to include the following:

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

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 former NSW Department of Planning Heritage Branch.

One digital set is to be submitted to the satisfaction of Council prior to the commencement of demolition work and prior to the issue of a construction certificate.

Note: Refer to the NSW OEH Heritage Branch free publication 'Photographic Recording of Heritage Items using Film or Digital Capture' available at: www.environment.nsw.gov.au

B.3 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.4 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.5 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) and Appendix 6 of the submitted Tree IQ Report. 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)
3	<i>Ulmus parvifolia</i> (Chinese Elm)	Street tree on Bay Street (Refer to Appendix B <i>Tree Location Plan</i> of the submitted Tree IQ Arboricultural report)	2
4	<i>Ulmus parvifolia</i> (Chinese Elm)	Street tree on Bay Street (Refer to Appendix B <i>Tree Location Plan</i> of the submitted Tree IQ Arboricultural report)	4

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

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

b) Tree Protection Zones shall be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence shall be established prior to any materials being bought onto the site and before the commencement of

works including demolition. The area within the fence shall be mulched and maintained to a depth of 75mm. The soil within the TPZ shall be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there shall be no access within the TPZ.

- c) Trunk protection shall be installed around the trunks of the following trees:

Council Ref No.	Species
3	<i>Ulmus parvifolia</i> (Chinese Elm)
4	<i>Ulmus parvifolia</i> (Chinese Elm)

Trunk protection shall consist of a padding material such as hessian or thick carpet underlay wrapped around the trunk. Hardwood planks (50mm x100mm or similar) shall be placed over the padding and around the trunk of the tree at 150mm centres. The planks shall be secured with 8 gauge wire at 300mm spacing. Trunk protection shall extend a minimum height of 2 metres or to the maximum possible length permitted by the first branches.

- d) A sign identifying the Tree Protection Zone shall be erected on each side of the protection fence indicating the existence of a TPZ. Signage must be visible from within the development site.
- e) No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones, unless specified in Condition B.2 of this consent.
- f) 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.
- g) All site personnel and contractors must be made aware of all tree protection requirements associated with these conditions of consent.
- h) 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.
Pruning of Tree 2 (located within the Royal Oak hotel)	• Ensure all works comply with AS 4373; • Ensure only those branches highlighted on Plate 4 of Page 15 and detailed within section 3.4 of the submitted Tree IQ Arboricultural report are pruned.
Excavation undertaken within the existing courtyard area of 30-36 Bay street (within the TPZ radius of Tree 2) - along the boundary line with the Royal Oak Hotel.	• Ensure excavation works and the demolition of existing hard surfaces are initially undertaken utilising small hand held machinery and hand tools; • Cease work if tree roots with a diameter exceeding 30mm are exposed; • Only recommence work with the implementation of the recommendations of the arborist; • Ensure all root pruning is undertaken utilising sharp, sterile pruning equipment
Demolition of the existing awning within the vicinity of Trees 3 & 4.	• Ensure works are undertaken in accordance with Section 1.6 of Appendix 6 of the submitted Tree IQ Tree Protection specification.
Erection of hoarding and construction of new awning within the vicinity of Trees 3 & 4.	• Ensure contact between machinery and branches is avoided; • Contact Woollahra Council's Technical Officer of Arboriculture for approval if pruning is deemed necessary.
Prior to the issue of a Final Occupation Certificate	• Supervise the dismantling of tree protection measures

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

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

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

C.1 Modification of details of the development (Section 80A(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:

- Pursuant to Clause 2.2.1 of AS/NZS 2890.6:2009*, bollards shall be provided within the shared area in the positions shown in Figures 2.2 and 2.3.

- b) Pursuant to Clause 3.2.4 of AS/NZS 2890.1:2004, a pedestrian splay shall be provided at the property line, west of the driveway.
- c) A minimum of 39 resident bicycle parking spaces, 3 motorbike parking spaces and 4 retail visitors bicycle spaces must be provided on-site.
- d) 1 of the 9 retail spaces must be assigned as a residential visitor parking space.

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 www.lspc.nsw.gov.au	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 <i>Council</i>)	\$574,290.00	No	T115
Infrastructure Works Bond (S138)	\$79,800.00	No	T113
Tree Damage Security Deposit (Making good any damage caused to any public tree as a consequence of the doing of anything to which the consent relates)	\$14,000.00	No	T600
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)	\$244,410.98 + Index Amount	Yes, quarterly	T96
INSPECTION FEES			
under Section 608 of the Local Government Act 1993			
Public Road/Footpath Infrastructure Inspection Fee (S138 Fee)	\$452.00	No	T45
Public Tree Management Inspection Fee	\$190.00	No	T95
Security Administration Fee	\$190.00	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$913,332.98 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 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 BASIX commitments

The *applicant* must submit to the *Certifying Authority* BASIX Certificate No.819723M_03 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.4 Road and Public Domain Works

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

Civil Works

- a) The removal of the existing vehicular crossing including layback and gutter and the construction of a new 5.5 metres wide vehicular crossing in accordance with Council's Crossing Specification. The new crossing shall be constructed at right angle to the street kerb in plain concrete. The centreline of the new crossing shall be in-line with the centreline of the proposed driveway.
- b) The construction of a double grated new kerb inlet pit with a 2.4m precast lintel in Bay Street over the existing underground drainage system in Bay Street for the

proposed stormwater discharge from the site. The access grates must be in Class D bicycle friendly grates.

- c) The reconstruction of full width footpath with Double Bay pavers for the full frontage of the site in accordance with Council's Specification. A design longitudinal surface profile (scale 1:100) and cross sections (scale 1:50) at every 5 metres interval must be submitted for assessment.
- d) The relocation of the existing Ausgrid power pole/street lighting. The construction of the new vehicular crossing will require the relocation of an existing street light/power pole. Alternatively, the proposed vehicular crossing must be located at least 1 metre away from the existing power pole to comply with Council's Crossing Specification.

The applicant is to make written application to Council for relocation of the street light/power pole. Subject to agreement to the relocation, Council will then forward a request to Ausgrid for the relocation.

Ausgrid has requirements concerning access to services that it provides. The requirements of Ausgrid must be obtained and submitted to Council. All costs associated with the relocation of the street lighting must be borne by the applicant. Contact for Council: *Team Leader – Traffic and Transport - Phone: 9391 7174*

Bond

- a) A bond of \$79,800 will be used as security to ensure the satisfactory completion of the infrastructure works. The security or bank guarantee must be the original unconditional bank guarantee with no expiry date.
- b) Council may use all or part of the Infrastructure Bond as well as the Property Damage Security Deposit to meet the cost of removing or completing the works if they do not meet Council's requirements.
- c) The Deposit/Bond will not be released until Council has inspected the site and is satisfied that the Works have been completed in accordance with Council approved drawings and to Council requirements

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

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

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

Note: See *Section K - Advisings* of this Consent titled *Roads Act Application*.

C.5 Utility Services Generally

The *Construction Certificate* plans and specifications, required by clause 139 of the *Regulation*, must demonstrate that all utility services (telecommunications, electricity, gas, water and waste water) will be provided underground. All service ducts, pipes and conduits must be provided within the fabric of the building (excluding stormwater down pipes).

Where telecommunications and electricity are provided from existing poles in the road they must, in accordance with the relevant suppliers' requirements, be carried to the site underground directly to the main switch board within the fabric of the building.

Note: Where adequate provision has not been made for an electrical sub-station within the building, this may necessitate the lodgement of an application to amend this consent under section 96 of the Act to detail the location, landscape/streetscape impacts and compliance with AS2890 as applicable.

The location of service poles and substations required by the relevant suppliers must be shown upon the plans submitted with any *Construction Certificate* application together with a letter from each relevant supplier setting out their requirements. Proposed water pipes, waste pipes, stack work, duct work, mechanical ventilation plant and the like must be located within the building unless expressly shown upon the approved DA plans. Details confirming compliance with this condition must be shown on the *Construction Certificate* plans and/or detailed within the *Construction Certificate* specifications. Required external vents or vent pipes on the roof or above the eaves must be shown on the *Construction Certificate* plans.

Note: The intent of this condition is that the design quality of the development must not be compromised by cables, pipes, conduits, ducts, plant, equipment, electricity substations or the like placed such that they are visible from any adjoining public place. They must be contained within the building unless shown otherwise by the approved development consent plans.

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

Note: This condition has been imposed to ensure that where private sewer pipes are old, may leak or may be subject to root invasion (whether from existing or proposed private or public landscaping) that existing cast iron, concrete, earthenware or terracotta pipes be replaced with new UPVC or copper continuously welded pipes between all sanitary fixtures and Sydney Waters sewer main, such that clause 25(1) of WLEP 1995 be satisfied. Further, leaking sewer pipes are a potential source of water pollution, unsafe and unhealthy conditions which must be remedied in the public interest.

C.6 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.7 Soil and Water Management Plan – Submission & Approval

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

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

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

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

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

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

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

C.8 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.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 Ground Anchors

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

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

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

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

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

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

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

C.11 Car Parking Details

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

The *Construction Certificate* plans must also detail the following:

- e) All reference to the 2 bicycle parking spaces on Council's footpath in Bay Street must be deleted.
- f) 39 bicycle spaces must be provided for the residential component of the development on the basement floor level excluding any secure storage spaces which can accommodate a Class 1 bike locker under AS 2890.3.
- g) 4 bicycle spaces must be provided for the retail area on the basement floor level.
- h) 3 motorbike parking spaces with a minimum dimension of 1.2m x 2.5m must be provided on the basement floor level.

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

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

C.12 Stormwater Management Plan

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

- a) General design in accordance with stormwater plans prepared by SCP Consulting Pty Ltd, Drawing No.160049:C2.01 Revision C dated 12.05.2017, other than amended by this and other conditions;
- b) The discharge of stormwater from the site shall be connected to a new kerb inlet pit located over the existing underground drainage system in Bay Street in accordance with Council's specification and requirements.
- c) Compliance the objectives and performance requirements of the BCA;
- d) Any rainwater tank (See Note below) required by BASIX commitments including their overflow connection to the Stormwater Drainage System, and
- e) General compliance with the Council's Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management, and

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) All invert levels reduced to Australian Height Datum (AHD),
- c) Location and dimensions of all drainage pits,

- d) Point and method of connection to Councils drainage infrastructure, and
- e) Overland flow paths over impervious areas.

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

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

C.13 Flood protection

The *Construction Certificate* plans and specifications, required by Clause 139 of the Regulation, must include a Flood Risk Management Plan on the basis of a 1:100 year Flood Level of RL3.92 detailing:

- a) Non-habitable floor levels must not be less than 300mm above the 1:100 year flood level. Otherwise, flood protection mechanical barriers/doors with a protection height of not less than 500mm above the flood level shall be provided to all entrances to the proposed basement/non-habitable areas.
- b) Habitable floor levels including foyer areas must not be less than 500mm above the 1:100 year flood level. Otherwise, flood protection mechanical barriers with a protection height of not less than 500mm above the flood level shall be provided to all habitable areas.
- c) All mechanical barriers/doors installed must be able to activate automatically without relying on manual operation.
- d) Flood compatible materials are to be used for all construction below the Flood Planning Level (FPL) being 500mm above the flood level.
- e) All electrical equipment is to be located above or water proofed to the Flood Planning Level (FPL) being 500mm above the flood level.
- f) Emergency Evacuation Plan shall be included in the flood report.
- g) Emergency evacuation procedures and permanent flood advisory signs are to be mounted in area frequented advising residents of what to do if a flood occurs.

Note: The revised driveway profile, gradients and transitions must be in accordance with Australian Standard 2890.1 – 2004, Part 1 (Off-street car parking). The driveway profile submitted to Council must contain all relevant details: reduced levels, proposed grades and distances. Council will not allow alteration to existing reduced levels within the road or any other public place to achieve flood protection.

C.14 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.15 Waste Storage – Mixed Developments (both commercial and residential)

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

- a) The storage of waste and recycling bins behind the building line or within non-habitable areas of the building,
- b) Two separate centralised waste and recycling rooms or areas, one for commercial waste and one for residential waste. They must be self-contained and have separate keys and locking systems.
- c) The path for wheeling bins between the waste and recycling storage area and the collection point must be free of steps and kerbs and having a maximum grade of 1:8. The waste storage area must be as close as possible to the service road collection point.
- d) Bins to be stored with lids down to prevent vermin from entering the waste containers.
- e) Smooth impervious floor graded to a floor waste and provided with a tap and hose to facilitate regular cleaning of the bins. A waste storage area that is located internal to the building must be fitted with both a hot and cold water supply and hose cocks. Wastewater must be discharged to the sewer in accordance with the requirements of Sydney Water.
- f) Walls and ceilings of the waste storage area must be constructed of an impervious material with a smooth finish. The junction between the walls and the floor must be covered with a minimum radius of 25mm to prevent the accumulation of waste matter.
- g) The garbage storage area must be well lit to enable use at night. A timer switch must be fitted to the light fitting to ensure the light is turned off after use.
- h) Odour problems must be minimised by exhaust ventilation.
- i) Both putrescible and recycling bins/crates must be stored together. Recycling bins must never stand alone. They must always be located beside putrescible waste bins. Putrescible bins must be located closest to the entrance to the waste storage room.
- j) Signage on the correct use of the waste management system and what materials may be recycled must be posted in the communal waste storage cupboard/ room or bin bay.

C.16 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.17 Acoustic Certification of Mechanical Plant & Equipment

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

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

Where sound attenuation is required this must be detailed.

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

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

C.18 Design sound levels for building interiors

The *Construction Certificate* plans and specifications required by clause 139 of the Regulation, must provide details showing how the recommendations of the Environmental Noise Impact Assessment, prepared by **Acoustic Logic** will be implemented.

Design sound levels for building interiors should not exceed those recommended maximum design sound levels, L_{Aeq} , dB(A) specified by AS 2107-2000, *Acoustics - Recommended design sound levels and reverberation times for building interiors*.

Note: The design sound levels given in AS 2107-2000 are not necessarily appropriate in all circumstances. In particular, lower noise levels may be appropriate in quiet environments or where expectations of quality are high. For example, lower design sound levels than those given as satisfactory in AS 2107-2000 may be preferred for luxury hotels and apartments. However, additional costs will be incurred in achieving sufficient sound attenuation between spaces for acoustic privacy requirements. For each 5 dB reduction in the ambient sound level, 5

dB must be added to the overall sound isolation performance of the dividing elements to maintain the same level of acoustic privacy. There could also be additional costs associated with the provision of quieter building services. As a minimum compliance with the *BCA* is mandatory.

C.19 Ventilation - Kitchen Exhaust- Smoke & Odour Control

The discharge of air from the kitchen exhaust ventilation system(s) is considered an obnoxious discharge under Section 3.7 of Australian Standard 1668.2-1991. The ductwork serving the proposed kitchen exhaust system(s) shall be arranged vertically with a discharge velocity of not less than 5 m/s and be situated at least 1 m above the ridge of a pitched roof or 3 m above the flat of the building.

All exhaust air and spill air shall be discharged to atmosphere in such a manner as not to cause a danger or nuisance to occupants in the building, occupants of neighbouring buildings or members of the public.

The design, construction and installation of the kitchen exhaust hood(s) shall comply with the requirements of *Appendix E, 'Kitchen Exhaust Hoods' of AS 1668.2-1991* and *Appendix F, 'Capture of Emissions By Kitchen Exhaust Hoods' of AS 1668.2-1991*.

A *Smoke & Odour Impact Assessment Report* is to be prepared by a suitably qualified engineer detailing the design specification of the proposed kitchen exhaust system, including all smoke and odour inhibiting controls and filtering systems.

The *Construction Certificate* plans and specifications, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail all the kitchen exhaust ventilation system(s), including all smoke and odour controls and filtering systems. Upon completion and prior to occupation of the premises, the kitchen exhaust ventilation system(s) shall be certified by a qualified engineer that the system(s) has been installed in accordance with AS 1668.1 and AS 1668.2 and the design specification as detailed in the *Smoke & Odour Impact Assessment Report*.

C.20 Ventilation - Enclosures used by Vehicles (Car parks, automotive service, enclosed driveways, loading docks and the like)

The (*nominate enclosure*) in which vehicles powered by internal combustion engines are parked, serviced or operated are required to comply with Section 4 'Ventilation of Enclosures used by Vehicles with Internal Combustion Engines' of Australian Standard 1668.2-1991. In general air distribution must achieve uniform dilution of contaminants in the garage and maintain contaminant concentrations below recommended exposure standards.

The (*nominate enclosure*) must be naturally ventilated or provided with a combination of both supply and exhaust mechanical ventilation. The applicant is to determine the method of ventilation of the (*nominate enclosure*) and provide details to the *Certifying Authority* accordingly. Except as varied in accordance with Clause 4.4.1 (a), (b) or (c), the (*nominate enclosure*) shall be mechanically ventilated by a combination of general exhaust and supply flow rates in accordance with Australian Standard 1668.2-1991.

C.21 Ventilation - Internal Sanitary Rooms

All internal sanitary rooms and laundry facilities not provided with natural ventilation must be provided with a system of mechanical exhaust ventilation in accordance with *Table B1 Minimum Exhaust Ventilation Flow Rates of AS 1668.2-1991*. Details of any proposed mechanical ventilation system(s) being submitted with the Construction Certificate plans and specifications, required to be submitted to the Certifying Authority demonstrating compliance with AS 1668 Parts 1 & 2.

C.8 Land Contamination

Given the limited nature of the Preliminary Investigation due to site constraints, confirmation of the contamination status of the site in the form of a **Detailed Site Investigation** will need to be undertaken post-demolition of the existing building. The **Detailed Site Investigation** shall be undertaken in accordance with the contaminated land planning guidelines.

A remediation action plan shall be prepared in respect of any contamination identified by the detailed investigation supported by a site audit statement that confirms that the remediation once carried out will render the land suitable for the purpose of the development, to the satisfaction of the Council.

C.8 Acid Sulfate Soils

Following demolition when full site access is possible, further sampling being undertaken from a minimum of three (3) additional test bores to provide coverage of the balance of the site and determine the lateral and vertical extent of PASS on the development site in accordance with ASSMAC Assessment Guidelines 1998 following demolition of the existing building.

Following the further sampling being undertaken, an amended Acid Sulfate Soils Management Plan must be prepared in accordance with the Acid Sulphate Soils Manual, NSW Acid Sulfate Soil Management Advisory Committee (August 1998) to the satisfaction of the Council.

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

D.1 Compliance with Building Code of Australia and insurance requirements under the [Home Building Act 1989](#)

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

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

This condition does not apply:

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

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

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

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

D.2 Dilapidation Reports for existing buildings

Dilapidation surveys must be conducted and dilapidation reports prepared by a *professional engineer* (structural) for all buildings and/or structures that are located within the likely “zone of influence” of any excavation, dewatering and/or construction induced vibration as determined by a Structural Engineer.

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

No. 28 Bay Street, Double Bay
No. 2 Guilfoyle Avenue, Double Bay
No. 3 South Avenue, Double Bay

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

Where excavation of the site will extend below the level of any immediately adjoining building the *principal contractor* or *owner builder* must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the *notice of commencement* required by S81A(2) of the *Act* not less than two (2) days prior to the commencement of any work.

Note: The reasons for this condition are:

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

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

D.3 Adjoining buildings founded on loose foundation materials

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

Note: A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such

contractors are likely to be held responsible for any damages arising from the removal of any support to supported land as defined by section 177 of the *Conveyancing Act 1919*.

D.4 Piezometers for the monitoring of Ground Water Levels (GWL)

The *principal contractor* must provide 2 piezometers within the excavation area and a further 2 piezometers around the perimeter of the wall. The piezometers are to be installed to monitor groundwater levels before and during all dewatering works for the construction phase.

The Ground Water Levels monitoring wells and monitoring program must be maintained until the issue of the *Final Occupation Certificate*.

Ground Water Levels are to be regularly monitored during the course of the works as required by the Work Method Statement for the control of Ground Water Levels. Any damaged piezometers are to be replaced to allow uninterrupted monitoring.

Where there are any movements in the Ground Water Levels outside a safe range set by the Work Method Statement for the control of Ground Water Levels corrective action must be undertaken under the direction of the *professional engineer* (hydrological/geotechnical engineer).

D.5 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.6 Works (Construction) Zone – Approval & Implementation

A works zone is required for this development. The *principal contractor* or *owner* must apply for a works zone. If the works zone is approved the *principal contractor* or *owner* must pay all fees for and implement the required works zone before commencement of any work.

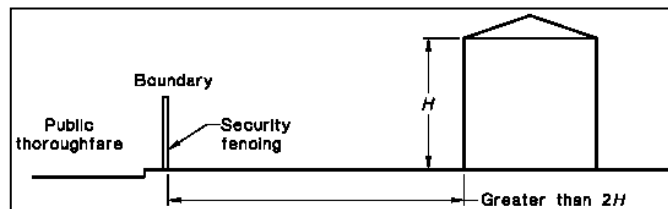
The *principal contractor* must pay all fees associated with the application and occupation and use of the road as a works zone. All works zone signs must have been erected by Council to permit enforcement of the works zone by Rangers and Police before commencement of any work. Signs are not erected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

Note: The *principal contractor* or *owner* must allow not less than four to six weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the Clause 22 of the *Transport Administration (General) Regulation 2000* to exercise those functions delegated by the Roads and Traffic Authority under Section 50 of the *Transport Administration Act 1988*.

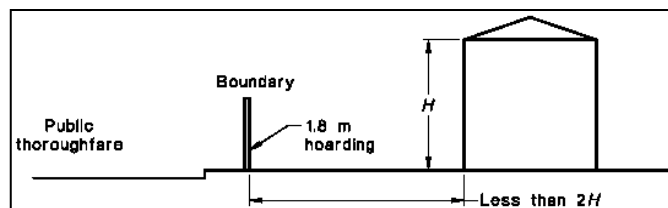
Note: The enforcement of the works zone is at the discretion of Council's Rangers and the NSW Police Service. The principal contractor must report any breach of the works zone to either Council or the NSW Police Service.

D.7 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.

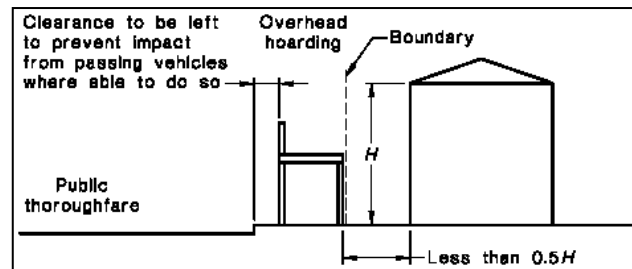


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either:

- 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: www.safework.nsw.gov.au

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.8 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.9 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 SafeCover requirements.

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 (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 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.12 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.13 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.14 Completion of remediation work

The remediation work identified in the plan referred to in Condition C.8 of this consent must be completed and pursuant to clause 17 of State Environmental Planning Policy No 55 - Remediation of Land, a notice of completion of the remediation work must be given to the Council within 30 days after the completion of the work.

This notice must be in accordance with clause 18 of SEPP 55.

E. Conditions which must be satisfied during any development work

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

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

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

This condition does not apply:

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

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

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

E.2 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.3 Compliance with Construction Management Plan

All development activities and traffic movements must be carried out in accordance with the approved construction management plan. All controls in the Plan must be maintained at all times. A copy of the Plan must be kept on-site at all times and made available to the *PCA* or *Council* on request.

Note: Irrespective of the provisions of the Construction Management Plan the provisions of traffic and parking legislation prevails.

E.4 Requirement to notify about new evidence

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

E.5 Critical Stage Inspections

Critical stage inspections must be called for by the *principal contractor* or *owner builder* as required by the PCA, any PCA service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the PCA is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the *Act*.

Critical stage inspections means the inspections prescribed by the *Regulations* for the purposes of section 109E(3)(d) of the *Act* or as required by the PCA and any PCA Service Agreement.

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

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

E.6 Hours of Work –Amenity of the neighbourhood

- a) No work must take place on any Sunday or public holiday,
- b) No work must take place before 7am or after 5pm any weekday,
- c) No work must take place before 7am or after 1pm any Saturday,
- d) The following work **must not** take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday;
 - (i) Piling;
 - (ii) Piering;
 - (iii) Rock or concrete cutting, boring or drilling;
 - (iv) Rock breaking;
 - (v) Rock sawing;
 - (vi) Jack hammering; or
 - (vii) Machine excavation,

- e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday
- f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday
- g) No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

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

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

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

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

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

Note: EPA Guidelines can be down loaded from www.epa.nsw.gov.au.

E.7 Public Footpaths – Safety, Access and Maintenance

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

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

This condition does not apply to the extent that a permit or approval exists under the section 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.8 Maintenance of Environmental Controls

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

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

Note: See www.epa.nsw.gov.au for additional information.

E.9 Compliance with Geotechnical / Hydrogeological Monitoring Program

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

The *principal contractor* and any sub-contractor must strictly follow the *Geotechnical / Hydrogeological Monitoring Program* for the development including, but not limited to;

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

Note: The consent authority cannot require that the author of the geotechnical/hydrogeological report submitted with the Development Application to be appointed as the *professional engineer*

supervising the work however, it is the Council's recommendation that the author of the report be retained during the construction stage.

E.10 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:

- the consent of the owners of such adjoining or supported land to trespass or encroach, or
- an access order under the Access to Neighbouring Land Act 2000, or
- an easement under section 88K of the *Conveyancing Act 1919*, or
- 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.11 Vibration Monitoring

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

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

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

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

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

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

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

Note: *Professional engineer* has the same mean as in Clause A1.1 of the BCA.

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

Note: *Supported land* has the same meaning as in section 88K of the Conveyancing Act 1919.

E.12 Erosion and Sediment Controls – Maintenance

The *principal contractor* or *owner builder* must maintain water pollution, erosion and sedimentation controls in accordance with:

- a) The Soil and Water Management Plan required under this consent;
- b) “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- c) “*Managing Urban Stormwater - Soils and Construction*” 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.13 Disposal of site water during construction

The principal contractor or owner builder must ensure:

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

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

E.14 Filling of site

To the extent that this consent permits filling of the site such fill must be *virgin excavated natural material* (“VENM”).

VENM means “Virgin excavated natural material (such as clay, gravel, sand, soil and rock) that is not mixed with any other type of waste and which has been excavated from areas of land that are not contaminated with human-made chemicals as a result of industrial, commercial, mining or agricultural activities and which do not contain sulphidic ores or soils.”

Note: This definition is the same as in Schedule 1 of the *Protection of the Environment Operations Act* 1997, Appendix IX: Types of waste.

Note: Sulphidic ores and soils are commonly known as Acid Sulphate Soils.

Note: If a person transports waste to a place (the site) that cannot lawfully be used as a waste facility for that waste: (a) the person, and, (b) if the person is not the owner of the waste, the owner, are each guilty of an offence under section 143 of the *Protection of the Environment Operations Act* 1997.

Note: A person who is the owner or occupier (principal contractor) of any land that cannot lawfully be used as a waste facility and who permits the land to be used as a waste facility is guilty of an offence under section 144 of the *Protection of the Environment Operations Act* 1997.

Note: Additional information is available from the following websites:

Is that fill legal? Illegal waste dumping? See www.epa.nsw.gov.au

E.15 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.16 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.17 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.18 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.19 Dust Mitigation

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

This generally requires:

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

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

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

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

E.20 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 down loaded free of charge from Council's website www.woollahra.nsw.gov.au

E.21 Site waste minimisation and management – Demolition

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

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

When implementing the SWMMP the applicant must ensure:

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

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

E.22 Site waste minimisation and management – Construction

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

- a) The provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work
- b) Arrange for the delivery of materials so that materials are delivered 'as needed' to prevent the degradation of materials through weathering and moisture damage
- c) Consider organising to return excess materials to the supplier or manufacturer
- d) Allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation)
- e) Clearly 'signpost' the purpose and content of the storage areas
- f) Arrange contractors for the transport, processing and disposal of waste and recycling. Ensure that all contractors are aware of the legal requirements for disposing of waste.
- g) Promote separate collection bins or areas for the storage of residual waste
- h) implement measures to prevent damage by the elements, odour and health risks, and windborne litter
- i) Minimise site disturbance and limit unnecessary excavation
- j) Ensure that all waste is transported to a place that can lawfully be used as a waste facility
- k) Retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as council, Department of Environment and Climate Change (DECC) or WorkCover NSW

E.23 Shoring and adequacy of adjoining property

For the purposes of section 80A (11) of the Act, the following condition is prescribed in relation to a development consent for development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land.

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

- a) Protect and support the adjoining premises from possible damage from the excavation; and,
- b) Where necessary, underpin the adjoining premises to prevent any such damage.

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

E.24 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 Safework NSW Code of Practice Amenity Tree Industry.

E.25 Asbestos Removal

Where hazardous material, including bonded or friable asbestos has been identified in accordance with condition B.7 above, and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:

- a) Be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (restricted) Asbestos License,
- b) Be carried out in accordance with National Occupational Health and Safety Commission (NOHSC): "*Code of Practice for the Safe Removal of Asbestos*",
- c) No asbestos products may be reused on the site
- d) No asbestos laden skip or bins shall be left in any public place

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

E.26 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.27 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with condition E.28 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.28 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.29 Notification of Asbestos Removal

In addition to the requirements for licensed asbestos removalists to give written notice to WorkCover 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.30 Compliance with Acid Sulfate Soils Management Plan

The Principal Contract/Owner Builder and any subcontractor must comply with the Acid Sulfate Soil Management Plan and the NSW Government Acid Sulfate Soils Management Advisory Committee guidelines.

Note: The Acid Sulfate Soils Management plan submitted with the Development Application sets out all the above requirements in detail.

Note: A failure to implement and maintain the Acid Sulfate Soils Management plan can result in the following environmental harm:

- damage to the soil structure so plant roots and soil organisms can't easily move about
- plant roots being burnt by acid, reducing plant health and productivity
- acid intolerant soil fauna and flora are killed, so the soil biodiversity and health are reduced
- plants and soil life can be poisoned by the available toxic metals
- loss of aquatic plants that can not survive acidic conditions
- loss of fish, crustaceans, birds and other animals
- damage to metal and concrete structures (such as bridge pylons and pipes)

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 execute is maintained.

Note: The *PCA* may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the *Act*, *Regulation*, *Development Standards*, *BCA*, and relevant *Australia Standards*. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).

Note: The *PCA* must submit to Council, with any *Occupation Certificate*, copies of works-as-executed (“WAE”) plans, *Compliance Certificates* and evidence of suitability in accordance with Part A2.2 of the *BCA* upon which the *PCA* has relied in issuing any *Occupation Certificate*.

F.3 Commissioning and Certification of Public Infrastructure Works

The *principal contractor* or *owner builder* must submit, to the satisfaction of Woollahra Municipal Council, certification from a *professional engineer* that all public infrastructure works have been executed in compliance with this consent and with Council’s *Specification for Roadworks, Drainage and Miscellaneous Works* dated February 2012.

The certification must be supported by closed circuit television / video inspection provided on DVD of all stormwater drainage together with Works-As-Executed engineering plans and a survey report detailing all finished reduced levels.

F.4 Letter Box(es)

All letter boxes must be constructed and located in accordance with AS/NZS 4253:1994 Mailboxes and to Australia Post's satisfaction.

Note: This condition has been imposed to ensure that mail can be delivered to occupiers of the site.

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

G.1 Electricity Substations – Dedication as road and/or easements for access

If an electricity substation, is required on the site the owner must dedicate to the appropriate energy authority (to its satisfaction), free of cost, an area of land adjoining the street alignment to enable an electricity substation to be established. The size and location of the electricity substation is to be in accordance with the requirements of the appropriate energy authority and Council. The opening of any access doors must not intrude onto the public road (footway or road pavement).

Documentary evidence of compliance, including correspondence from the energy authority is to be provided to the *Principal Certifying Authority* prior to issue of the Construction Certificate detailing energy authority requirements.

The Accredited Certifier must be satisfied that the requirements of energy authority have been met prior to issue of the Construction Certificate.

Where an electricity substation is provided on the site adjoining the road boundary, the area within which the electricity substation is located must be dedicated as public road. Where access is required across the site to access an electricity substation an easement for access across the site from the public place must be created upon the linen plans burdening the subject site and benefiting the Crown in right of New South Wales and any Statutory Corporation requiring access to the electricity substation.

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

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

All BASIX commitments must be effected in accordance with the BASIX Certificate No.819723M_03.

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 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.3 Removal of Ancillary Works and Structures

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

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

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

H.4 Road Works (including footpaths)

The following works must be completed to the satisfaction of Council, in compliance with Council's "Specification for Roadworks, Drainage and Miscellaneous Works" dated February 2012 unless expressly provided otherwise by these conditions at the *principal contractor's* or *owner's* expense:

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

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

H.5 Positive Covenant & Works-As-Executed certification of stormwater systems

On completion of construction work, stormwater drainage works are to be certified by a *professional engineer* with Works-As-Executed drawings supplied to the *PCA* detailing:

- a) Compliance with conditions of development consent relating to stormwater;
- b) That the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations;
- c) Pipe invert levels and surface levels to Australian Height Datum;

- d) Contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits;
- e) 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 all mechanical barriers, pumps and sump systems incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered at the Land Titles Office.

Note: The required wording of the Instrument can be downloaded from Council's web site www.woollahra.nsw.gov.au. 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.6 Completion of remediation work

After completion of any remedial works required by the Remedial Action Plan, the applicant must provide a copy of the validation report supported by a Site Audit Statement to Council's satisfaction before the issuing of any occupation certificate.

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

I.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No.819723M_03.

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 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.

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

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

I.3 Noise from mechanical plant and equipment

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

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

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

Note: Words in this condition have the same meaning as in the: *NSW Industrial Noise Policy* ISBN 07313 27152, dated January 2000, and *Noise Guide for Local Government* ISBN 1741370671, dated December 2004 (www.environment.nsw.gov.au)

I.4 Waste Management

The owner and/or occupier must comply with the approved Site Waste Minimisation and Management Plan (SWMMP).

All waste must be presented for collection in a receptacle. Waste receptacles must be presented no earlier than the close of business on the day before collection. Waste and recycling bins/crates must be removed from the road or footpath within 1 hour of collection or otherwise in accordance with the approved SWMMP.

Receptacles are not to be stored in any public place at anytime. Waste and recycling receptacles must be stored at all times within the boundaries of the site.

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

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

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

I.5 Clothes drying etcetera

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

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

I.6 Resident Parking Scheme

Owners, tenants and residents of the completed development will not be permitted to participate in any Council operated on-street parking permit scheme.

Note: This condition is imposed to preserve the level of on street parking availability in the vicinity of the premises and minimise impacts of traffic generation upon the surrounding road network as a result of the development.

I.7 Provision of Off-street Parking

The owner and occupier, in compliance with AS/NZS 2890.1:2004 Parking Facilities – Off-Street Car Parking and AS/NZS 2890.6:2009 Parking facilities Part 6: Off-street parking for people with disabilities, must maintain unimpeded public access to the basement level parking as follows:

Unit Number	Number of Bedrooms	Number of Spaces
1.02	2	1 (Disabled)
2.02	2	1 (Disabled)

3.02	2	1 (Disabled)
4.02	2	1 (Disabled)
5.06	3	2 (Tandem)
5.02	3	2 (Tandem)
5.03	3	2 (Tandem)
5.04	3	2 (Tandem)
5.07	2	2 (Tandem)
1.03	2	1
1.04	2	1
1.05	2	1
2.03	2	1
2.04	2	1
2.05	2	1
3.03	2	1
3.04	2	1
3.05	2	1
4.03	2	1
Total	-	24

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

I.8 Hours of use

The hours of use of the retail spaces are limited to the following:

- a) Monday to Saturday: 6:00am to 10:00pm
- b) Sunday and Public Holiday: 7:00am to 10:00pm

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

Note: Deliveries to or dispatches from the site must not be made outside these hours. Trading Hours may be more onerous than these general hours of use. This condition does not apply to activities such as cleaning which takes place wholly within the building and which are not audible within any adjoining residential dwelling. If internal activities are audible within any adjoining residential dwelling such that they cause a nuisance to the occupiers of such dwelling then such internal activities must not occur outside these hours of use. This condition does not restrict the operation of noise pollution laws.

J. Miscellaneous Conditions

Nil.

K. Advisings

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

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

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

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

Warnings as to potential maximum penalties

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

Warning as to enforcement and legal costs

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

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

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the *Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites: www.theshopfront.org 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 Commonwealth Disability Discrimination Act 1992 (“DDA”)

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

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

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

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

K.4 NSW Police Service and Road Closures

The Rose Bay Local Area Command closely aligns with the boundaries of the Woollahra local government area.

Council and Police approval is required prior to a partial or full temporary road closure. If you are seeking a partial or full temporary road closure you must comply with the relevant conditions of this consent and you must also gain the approval of the Traffic Sergeant, Paddington Police Station, 16 Jersey Road, Paddington. Phone No.: 0283568299 or Fax No.: 0283568211.

Warning: If you partial or full close a road without compliance with Council and Police requirements Council Rangers or the Police can issue Penalty Infringement Notices or Court Attendance Notices leading to prosecution.

K.5 Builder's Licences and Owner Builders Permits

Section 81A of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appointed a *principal contractor* for residential building work who must be the holder of a contractor licence.

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder) www.dft.nsw.gov.au.

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.6 Building Standards - Guide to Standards and Tolerances

The PCA does not undertake detailed quality control inspections and the role of the PCA is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia. Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the "Guide to Standards and Tolerances©" ISBN 0 7347 6010 8 are achieved.

The quality of any development is a function of the quality of the *principal contractor's* or *owner builder's* supervision of individual contractors and trades on a daily basis during the development. The PCA does not undertake this role.

The NSW Office of Fair Trading have published a "Guide to Standards and Tolerances©" ISBN 0 7347 6010 8. The guide can be obtained from the Office of Fair Trading by calling 13 32 20 or by Fax: 9619 8618 or by post to: Marketing Branch, PO Box 972, Parramatta NSW 2124.

The Guide can be down loaded from: www.fairtrading.nsw.gov.au

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

K.7 SafeWork requirements

The Work Health and Safety Act 2011 No.10 and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

Note: Further information can be obtained from Safe Work NSW's website: www.safeworkcover.nsw.gov.au or through their head office: Location: SafeWork NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address: SafeWork NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325 4145.

K.8 Asbestos Removal, Repair or Disturbance

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from SafeWork NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from SafeWork NSW. A permit will not be granted without a current SafeWork licence.

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

- a) Work Health and Safety Act 2011;
- b) Work Health and Safety Regulation 2011;
- c) The Code of Practice for the Safe Removal of Asbestos [NOHSC: 2005];
- d) The Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)] www.nohsc.gov.au;
- e) The SafeWork NSW Code of Practice how to manage and control asbestos in the work place 2016.

K.9 Lead Paint

It is beyond the scope of this consent to provide detailed information about dealing with lead paint. Painters working in an area containing lead-based paint should refer to Australian Standard AS 4361.1–1995, Guide to Lead Paint Management—Industrial Applications, or AS 4361.2–1998, Guide to Lead Paint Management—Residential and Commercial Buildings.

Industrial paints may contain lead. Lead is used in some specialised sign-writing and artist paints, and road marking paints, and anti-corrosive paints. Lead was a major ingredient in commercial and residential paints from the late 1800s to 1970. Most Australian commercial buildings and residential homes built before 1970 contain lead paint. These paints were used both inside and outside buildings.

Lead 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.10 Dividing Fences

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

Note: Further information can be obtained from the NSW Department of Lands: www.lands.nsw.gov.au. 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 www.cjc.nsw.gov.au.

K.11 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Mr Dimitri Lukas, Senior Assessment Officer, on (02) 9391 7159.

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

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

K.12 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the *Act*.

The securities will not be released until a *Final Occupation Certificate* has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council's requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council's requirements.

Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council's satisfaction as the case may be.

Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.

Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the Bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.

Note: The Application for Refund of Security form can be downloaded from www.woollahra.nsw.gov.au

K.13 Recycling of Demolition and Building Material

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials.

K.14 Owner Builders

Under the *Home Building Act 1989* any property owner who intends undertaking construction work to a dwelling house or dual occupancy to the value of \$12,000 or over must complete an approved education course and obtain an owner-builder permit from the Office of Fair Trading (see www.fairtrading.nsw.gov.au.)

K.15 Pruning or Removing a Tree Growing on Private Property

Woollahra Municipal Council's Development Control Plan (DCP) 2015, Tree Management Chapter E3 may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

Before you prune or remove a tree, make sure you read all relevant conditions. You can obtain a copy of the DCP from Council's website www.woollahra.nsw.gov.au or you may contact Council on 9391-7000 for further advice.

K.16 Model

If you submitted a model with the application it must be collected from the Council offices within fourteen (14) days of the date of this determination. Models not collected will be disposed of by Council.

K.17 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 request and may be used by them in the event of a dispute relating to damage allegedly due to the carrying out of the development.
- b) This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.
- c) Council will not be held responsible for any damage which may be caused to adjoining buildings as a consequence of the development being carried out.
- d) Council will not become directly involved in disputes between the Developer, its contractors and the owners of neighbouring buildings.
- e) In the event that access for undertaking the dilapidation survey is denied the applicant is to demonstrate in writing to the satisfaction of the 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.18 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 Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management, 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.

Annexure 12

Applicant's legal opinion relating to Clause 4.6 (Mr Galasso's advice)

PARTNERS
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OUR REF: CR:MC:2016-248

15 December 2017

The General Manager
Woollahra Municipal Council
536 New South Head Road
DOUBLE BAY NSW 2028

Attention: Mr N Economou/Mr D Lukas

Dear Sir

RE: ANKA DOUBLE BAY PTY LIMITED – DA 359/2017
PROPERTIES: 30-36 BAY STREET AND 2 GUILFOYLE AVENUE, DOUBLE BAY

We act for Anka Double Bay Pty Limited in relation to the above development application.

We enclose Memorandum of Opinion by Adrian Galasso SC dated 14 December 2017.

You will note that Mr Galasso is of the opinion that there is

“an historical factual basis for recognising repeated, significant, departures from the control as expressed in its earlier form, and as translated into the current EPI”.

These departures, and the departures under the current EPI are in the opinion of Mr Galasso sufficient to be able to say that

“it is entirely arguable that by its own conduct the Council has effectively abandoned the development standard sufficient to say that compliance with them is unreasonable or unnecessary”.

Mr Galasso further says that in his opinion

“a finding by the Council (or for that matter by the Court in a merit appeal) to that effect is entirely supportable on the evidence.”

In addition, although not stated in the Memorandum of Opinion by Mr Galasso Council would be aware that in respect of the “Fivex” site prior to approval of DA 125/2017 there were four other development approvals all of which exceeded the controls at the time being DA 1054/2002, DA 207/2005, DA 135/2009 and DA 568/2013.

Should there be anything in the Memorandum of Opinion or this letter which you may wish to discuss please do not hesitate to contact the writer.

Yours faithfully

REID & VESELY

Per: 

DX: 12010 BONDI JUNCTION

FACSIMILE No. (02) 9387 3605

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ANKA DOUBLE BAY PTY LIMITED

30-36 BAY STREET AND 2 GUILFOYLE AVENUE, DOUBLE BAY

MEMORANDUM OF OPINION

1. My instructing solicitor acts on behalf of Anka Double Bay Pty Ltd, the proponent of a development application for the redevelopment of premises generally known as 30-36 Bay Street, and 2 Guilfoyle Avenue, Double Bay.
2. Presently located on the subject site are two attached four storey commercial buildings with ground level retailing. The proposal involves the demolition of existing structures and the construction of a mixed use development comprising basement car parking, ground level retail and 39 residential apartments in the form of shop-top housing, as that term is defined in the relevant environmental planning instrument.
3. The principal environmental planning instrument that relates to the subject site is the *Woollahra Local Environmental Plan 2014*. Pursuant to that EPI the subject property is zoned B2 Local Centre and, as characterised as “shop-top housing”, the proposal is permissible with development consent.
4. As relevant to this Memorandum of Opinion, pursuant to clause 4.3 of the LEP certain nominated heights are expressed as maximum with respect to redevelopment of the subject land (noting that as the development site straddles two different height controls, an 18.1m height control and a 14.7m height control exist). The proposal would breach both of those development standards.
5. Pursuant to clause 4.4 of the LEP certain floor space ratios are expressed as maxima (noting the prescription of a 2.5:1 FSR, with an ability, pursuant to clause 4.4A of the LEP, to allow an FSR of 3:1 on the Bay Street site if the

consent authority is satisfied that the development will be compatible with the desired future character of the zone in terms of building bulk and scale). Irrespective of the manner in which the FSR may be calculated across the two sites that comprise the overall development site, for the purposes of this Memorandum of Opinion the proposal is assumed to not comply with the prescribed FSR maximum(a).

6. The Development Application was accompanied by a Statement of Environmental Effects to which were appended two appendices, Appendix A dealing with the request to exceed the height control pursuant to clause 4.6 of the LEP, and Appendix B comprising a request to exceed the FSR control pursuant to clause 4.6 of the LEP.
7. Whilst, as recorded above, clauses 4.3 and 4.4 (and clause 4.4A) of the LEP express certain development standards as maxima, pursuant to clause 4.6 of the Woollahra LEP, there exists, in certain circumstances, the ability to grant consent to the development even in the circumstances of the non-compliances. In terms, clause 4.6 of the LEP is as follows:

4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note.

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

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

8. As is apparent from clause 4.6(2), the enabling power provided by clause 4.6 is not available with respect to a development standard that is expressly excluded from the operation of the clause. Clause 4.6(8) exempts certain development standards, and neither clause 4.3 nor clause 4.4 are expressed as being exempted. Otherwise it may be safely assumed that both clauses 4.3 and 4.4 are development standards.
9. In determining whether to exercise the discretion available in clause 4.6(2), certain elements are required to be addressed:
 - (a) firstly, there is required to be a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a));
 - (b) there needs to be a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b));
 - (c) the consent authority must have considered those written requests (clause 4.6(3));
 - (d) the consent authority must be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) (clause 4.6(4)(a)(i)); and
 - (e) the consent authority must 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 (clause 4.6(4)(a)(ii)).

10. There is also the precondition to the availability of the enabling power, being the existence of the concurrence of the Secretary: clause 4.6(4)(b) and (5). For the purposes of this Memorandum of Opinion, I shall assume the existence of concurrence of the Director-General: Circular PS08-003 issued on 9 May 2008.
11. The particular requirements of the consideration of the above elements, and the thresholds for satisfaction of them, are as generally discussed by Preston CJ in *Randwick City Council v Micaul Holdings* (2016) 225 LGERA 94. Insofar as the matter in respect of which I have been asked to express an opinion is concerned (as identified below), those thresholds are not presently relevant, but nonetheless will need to be considered by the consent authority in the determination of the variations pursuant to clause 4.6.
12. As summarised above, one of the elements, however, to which that consideration must be directed is both that there exists a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)); and the consent authority's satisfaction that that written request has adequately addressed that matter (clause 4.6(4)(a)(i)). The relevant phrase for the purposes of this Memorandum of Opinion is that compliance with the development standard is "unreasonable or unnecessary in the circumstances of the case".
13. That phrase has a historical connection with an identical phrase as it existed in *State Environmental Planning Policy No 1 – Development Standards*. That Policy, as, in essence, the precursor to clause 4.6 (as contained in the Standard Instrument adopted under the *Environmental Planning and Assessment Act*) afforded a not dissimilar power to grant consent to development notwithstanding non-compliance with development standards, albeit that the elements to the existence of, and the matters to be satisfied as part of the exercise of the discretion, were in some instances different.

14. The oft cited summary of the manners in which it may be established that compliance with a development standard is unreasonable or unnecessary is as set out by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 at [42]-[52]. That was a decision considering SEPP 1, but the “unreasonable or unnecessary” element in that Policy is identical to cl.4.6, and the authority is commonly, if not exclusively, relied upon with respect to that phrase.
15. In *Wehbe* Preston J identified the five manners as being (as I would summarise them):
 - (i) because the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
 - (ii) that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
 - (iii) that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
 - (iv) that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
 - (v) that the zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable and unnecessary.
16. As set out above, the Statement of Environmental Effects is accompanied by two appendices comprising written requests pursuant to clause 4.6 of the LEP with respect to the height control and the FSR control. In terms, both of those

appendices direct attention to the first, third and fourth ways (to use that numbering as adopted from *Wehbe* of establishing the compliance with the development standard is unreasonable or unnecessary).

17. **I have been Briefed to provide my opinion with respect to, in particular, the fourth way.**

18. As Preston J set out in *Wehbe* at [47]:

“A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unreasonable and unnecessary: *North Shore Gas v North Shore Municipal Council*; *Legal and General Life v North Sydney Municipal Council* at 202; *City West Housing v Sydney City Council* at [69]-[70].”

19. In particular, I have been requested to provide my opinion as to whether it is open to conclude that this fourth element has been satisfied in the circumstances of the development standards relevant to the development application.

20. **For the reasons that I set out below, I am of the opinion that it is entirely arguable that that is the case with respect to the two development standards.**

21. The foundation for this fourth way of establishing that compliance is unreasonable or unnecessary in [47] of *Wehbe* are the three decisions to which Preston J has referred. I note at the outset that to the extent that Preston J summarises the element, he references compliance with the standard as being “unnecessary and unreasonable”, whereas clause 4.6 is concerned with compliance being “unreasonable or unnecessary”. Whether or not that was a mere typographical error (because SEPP 1 uses “or” rather than “and”), or a substantive element, does not matter in the circumstance of this case because, as set out above, clause 4.6 utilises the disjunctive “or”, which would infer a lesser standard if it was a substantive difference.

22. The first decision to which Preston J refers is the decision of Stein J in *North Shore Gas v North Shore Municipal Council* (unreported, 15 September 1986).
23. In *North Shore Gas* Stein J was considering an application for a multi storey commercial building in North Sydney. The proposed FSR was 7:1 (or 7.5:1 depending on whether balconies and terraces were to be included in the calculation of floor space), and the control was 1.5:1. Stein J upheld the SEPP 1 objection. The particular paragraph as relevant to this element (from *Wehbe*) is paragraph (17), reason (3) (as a series of reasons for the upholding of the SEPP 1 objection) which I set out in full as follows:

“(3) The underlying purpose of the development standard has been virtually abandoned or destroyed by Council by its most infrequent approvals of FSRs higher than the statutory standard. In some cases these have involved transfers from outside [emphasis in the original] the CBD (e.g. from the Civic Centre site and also one in St Leonards). On the nearby Station Hotel site at the corner of Blue Street and Pacific Highway Council has recently approved an FSR of in excess of 12:1. Others in the CBD have involved increases from 4:1 to 9:1. Further, Council has on occasions rezoned sites outside the CBD to commercial and then “sold” the air space rights thereby created (in addition to transferring them into [emphasis in the original] the CBD). In the circumstances disclosed by the evidence it is my opinion that it is unnecessary for this particular site to strictly comply with a standard which has been severely mauled if not abandoned by Council’s own conduct. I reject Mr McClellan’s submission that Council’s departures from the standard have been an enforcement of it by transfers rather than an abandonment of it. To me this is turning the standard on its head particularly when some transfers have been from outside the CBD and involved artificially created floor space.”

24. The facts in *North Shore Gas*, as with every case, are particular to it. Nonetheless the principle gleaned from it has been endorsed by subsequent decisions sufficient to acknowledge that if it is the case, as a matter of fact, that the Council has effectively abandoned the control, then that circumstance exists sufficient to maintain that compliance with the control is unreasonable or unnecessary in the particular case.

25. The second decision referenced in *Wehbe* is that of Cripps CJ in *Legal & General Life of Australia Ltd v North Sydney Municipal Council* (1989) 68 LGRA 192. At page 202, Cripps CJ provided no further analysis beyond the decision of Stein J in *North Shore Gas*, observing that (in essence the first test as identified by Preston J) is only one of the tests and that in *North Shore Gas Company* "...Stein J held that compliance with a development standard was unreasonable and unnecessary for the reason, *inter alia*, that the standard had been virtually abandoned or destroyed by the Council's own action".
26. In a sense not dissimilarly in *City West Housing v Sydney City Council* (1999) 110 LGERA 262, the third decision referenced by Preston J, Bignold J merely extracted, at [69], the paragraph in *Legal & General Life* where Cripps CJ referenced the decision of Stein J in *North Shore Gas*, providing no further analysis.
27. Thus, to the extent that this fourth way may be available to demonstrate that compliance with the development standard is unreasonable and/or unnecessary, it is concerned with the notion that "the standard has been virtually abandoned or destroyed by the Council's own action". That question is, self-evidently, one of fact and degree.
28. In order to determine that question, of course, one needs to consider what it is that is the action that is said to constitute that abandonment. In the SEE and in Appendices A and B thereto, there have been references made to certain decisions of the Council said to constitute such conduct.
29. For the purposes of my consideration of the question, those instances have been updated and presented to me in table form with an accompanying aerial map identifying the location of the sites addressed in the table. I attach the table and the map to this Memorandum of Opinion for the purposes of identification of the conduct that may be said to constitute such action.

30. From the table it can be seen that there are many instances within the central core of Double Bay in which the controls related to height and floor space ratio have been departed from by reference to Council decisions.
31. More specifically, in the recent 15 years or so it is apparent that in many instances, as demonstrated in the table, the council has granted consent for proposals which exceed the FSR controls applicable at the time; and some of those instances also exceeded the height controls. Those located most closely to the subject site (which in the table and map is identified as site 99) include sites 1, 12, 13, 14, 15, 16, 17, 18, 20, 22, and 34. In addition, site 4 complied with the FSR control, but exceeded the height control.
32. The point to be gleaned from the table is that by the Council's conduct, historically, it is apparent that the control(s) have been virtually abandoned. This is because there are many examples of where there have been grants of consent for development which are in exceedance (by a not insignificant amount) of the controls. Whilst the departure may not have been as extreme as that recorded in *North Shore Gas*, there has nonetheless been a systematic and frequent departure from the controls.
33. As the table indicates many of those decisions have been under the planning regime established by the 1995 LEP (and the 2005 DCP). That regime was repealed and replaced by the 2014 LEP. However, that notwithstanding, as I am instructed, the development standards in the 2014 LEP replaced those in the earlier regime (updating the integers of the prior controls to the integers required in the Standard Instrument - for example height being expressed in metres; and importing standards into the LEP which may have been manifest in the earlier DCP).
34. In the normal course it might be thought that upon the making of the 2014 LEP the opportunity arose for a case in which it might be said that whatever conduct is identifiable to establish the proposition that the development standard had been abandoned, that position can be converted to a circumstance in which, under the new instrument, the development standards, as reflected in "new

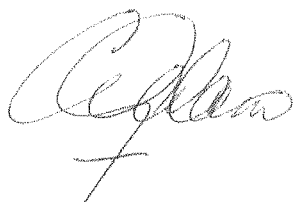
controls" (albeit expressed in new ways, but comprising the old controls, as set out above) are not similarly to be (or being) abandoned.

35. However, as is apparent from the table annexed to this Memorandum of Opinion, the conduct of the Council in granting consent to applications which departed in a material way from those standards continued even after the making of LEP 2014. Of the sites identified in [31] above (as comprising sites located closest to the subject site) site 34 was approved under the regime in the current LEP 2014. Outside the immediate area, site 36 has also been approved under the current regime, again which an exceedance of the control. Thus to the extent that it may be said that the approvals relate to the prior regime and that with the coming into effect of LEP 2014 nothing can be gleaned from the historical approvals, it would seem apparent that the conduct under the prior regime is being carried forward to present day.
36. (I note in this analysis that I have not mentioned site 2, the "Fivex" site, which was approved with an exceedance of the controls, but also had as relevant to it an acceptance of a planning proposal for a variation of the controls. The analysis does not depend on that site, but equally that site should not be necessarily discounted as an example of the Council's conduct in departing from the controls)
37. Accordingly, whilst it may be thought that this fourth way of establishing the compliance with the development standard is unreasonable and/or unnecessary might be rare, there is ample evidence of such conduct insofar as Double Bay is concerned. There is no doubt in my opinion that there is an historical factual basis for recognising repeated, significant, departures from the control as expressed in its earlier form, and as translated into the current EPI. Those departures, and the departures under the current EPI, in my opinion are sufficient to be able to say that it is entirely arguable that by its own conduct the Council has effectively abandoned the development standard sufficient to say that compliance with them is unreasonable or unnecessary. And in that respect, in my opinion, a finding by the Council (or for that matter by the Court

in a merit appeal) to that effect is entirely supportable on the evidence presented by the table annexed to this Memorandum of Opinion.

38. Accordingly, for the reasons set out above, insofar as the fourth way of establishing that compliance with a development standard is unreasonable or unnecessary is concerned, in the circumstances of the present case it would be open to the Council to make such a finding in order to satisfy one of the elements required in the upholding of the written request lodged by the proponent pursuant to clause 4.6 of the LEP.

14 December 2017

A handwritten signature in black ink, appearing to read 'Adrian Galasso', with a stylized flourish at the end.

ADRIAN GALASSO SC

Chambers,



Summary of Council Approvals outside Controls

map ref	DA #	Date lodged	Cost of Work	Address	extant work	Applicable Control			By whom	Date	approved ?	Approved			Colonnade		followed controls?
						Document	Height	FSR				Height	%over	FSR	%over	Colonnade	
1	333/2000	17/04/2000	\$ 14,000,000	1 Guilfoyle Ave 838 Bay St, Double Bay (Chancellor)	demo existing. Build new resi / commercial	WLEP 1995 DCP 2002	16.5	2.5:1	reqd	596 25/2/2004	approved	18.3	11%	2.81:1	12%	ind	☒
2	1054/2002	17/12/2002	\$ 3,500,000	374-382 New South Head Rd, Double Bay (Fives)	demo existing build new 4 storey mixed use	WLEP 1995 DCP 2002	13.5	3:1		22/03/2004	Council	16.2	20%	3:1:1	3%		☒
3	649/2003	7/08/2003	\$ 2,885,000	59 William St, Double Bay	demo existing build new 3 storey resi	WLEP 1995 DCP 2002	9.5	0.875:1		16/08/2004	DCC	11.72	23%	0.99:1	13%		☒
4	950/2003	5/11/2003	\$ 29,700,000	2-22 Knox St, Double Bay (Cosmopolitan)	demo existing hotel refurb GF retail. Add 5 storeys resi / carpark	WLEP 1995 DCP 2002	16.5	2.5:1	reqd	30/08/2004	Council	20.7	26%	2.5:1		excl	☒
2	207/2005	15/04/2005	\$ 5,000,000	376-382 New South Head Rd, Double Bay (Fives)	new 4 storey retail/commercial	WLEP 1995 DCP 2002	13.5	3:1		14/11/2005	approved	19.3	43%	3.66:1	22%		☒
6	292/2005	20/05/2005	\$ 2,200,000	14 Court Rd, Double Bay	demo existing build 3 storey resi	WLEP 1995 DCP 2002	12.0	950m2 min		7/05/2006	DCC	11.4		819m2			☒
7	360/2005	17/06/2005	\$ 2,500,000	1 Stafford St & 8 Beach St, Double Bay	demo existing. Build 3 storey resi	WLEP 1995 DCP 2002	9.5	0.625:1		4/09/2006 11/09/2006	DCC approved Council refused	9.5		1.16:1	36%		☒
8	588/2005	23/09/2005	\$ 4,500,000	342-344 New South Head Rd, Double Bay	demo existing build new 4 storey retail / commercial	WLEP 1995 DCP 2002	13.5	2.5:1		16/07/2007	DCC	14.65	9%	2.81:1	12%		☒
9	765/2005	6/12/2005	\$ 4,800,000	28 Bay St, Double Bay (Royal Oak)	hotel alterations and additions incl resi above	WLEP 1995 DCP 2002	16.5	2.5:1	reqd	6/11/2006	DCC	16.5		2.49:1		excl	☒
10	67/2007	7/02/2007	\$ 1,610,000	1 Stafford St & 8 Beach St, Double Bay	demo existing. Build 2 new houses	WLEP 1995 DCP 2002	9.5	0.625:1		15/05/2007	AAP	9.5		1.05:1	70%		☒
11	228/2007	16/04/2007	\$ 2,813,000	15 Cooper St, Double Bay	demo existing build 4 houses	WLEP 1995 DCP 2002	7.5	350m2 min		12/02/2008	AAP	9.2	23%	1.88m2			☒
12	242/2007	19/04/2007	\$ 9,600,000	49 Bay St, Double Bay	demo existing build new resi/commercial	WLEP 1995 DCP 2002	16.5	3:1		20/07/2009	DCC	18.5	12%	3.98:1	3%		☒
				51-53 Bay St, Double Bay		WLEP 1995 DCP 2002	16.5	2.5:1	reqd			18.5	12%	2.61:1	4%	ind	☒
13				11-15 Guilfoyle Ave, Double Bay		WLEP 1995 DCP 2002	7.5	0.625:1		pre 2008				1.36:1	118%		☒
14				20 Guilfoyle Ave, Double Bay		WLEP 1995 DCP 2002	9.5	0.625:1		pre 2008				1.27:1	103%		☒
15				21 Guilfoyle Ave, Double Bay		WLEP 1995 DCP 2002	9.5	0.625:1		pre 2008				1.82:1	191%		☒
16				25 Guilfoyle Ave, Double Bay		WLEP 1995 DCP 2002	9.5	0.625:1		pre 2008				2.01:1	222%		☒
17				17-19 Guilfoyle Ave, Double Bay		WLEP 1995 DCP 2002	9.5	0.625:1		pre 2008				1.39:1	122%		☒
18				9 Guilfoyle Ave, Double Bay		WLEP 1995 DCP 2002	9.5	0.625:1		pre 2008				1.48:1	137%		☒
19	35/2008	25/01/2008	\$ 3,939,706	2 Short St, Double Bay	demo existing build new 4 storey mixed commercial	WLEP 1995 DCP 2002	7.5	2.5:1		9/07/2008	AAP	15.5	107%	2.84:1	14%		☒
20	324/2008	3/06/2008	\$ 4,503,615	4-10 & 12 Guilfoyle Ave, Double Bay (Buetto)	demo existing build resi 4 storeys or more	WLEP 1995 DCP 2002	9.5	0.625:1		17/11/2008	Council	14.7	55%	1.7:1	172%		☒
2	135/2009	23/03/2009	\$ 250,000	376-382 New South Head Rd, Double Bay (Fives)	add cinema to roof	WLEP 1995 DCP 2002	13.5	3:1		29/11/2010	Council	20.6	53%	3.9:1	30%		☒
22	671/2010	10/12/2010	\$ 67,705,000	35 Cross St, Double Bay (Intercontinental Hotel)	demo existing bldg to GF build 9 storey cinema / resi	WLEP 1995 DCP 2002	16.5	2.5:1		13/12/2011	IRPP	26.2	59%	4.44:1	78%		☒
23	96/2011	18/05/2011	\$ 4,614,026	377-383 New South Head Rd, Double Bay	demo existing cinema build 5 storey commercial/retail	WLEP 1995 DCP 2002	16.5	2.5:1		13/02/2012	Council	18.3	11%	3.72:1	49%		☒
24	531/2011	18/11/2011	\$ 65,426,423	1-9 Patterson St, Double Bay (Kiaora Lands)	demo existing 2 new bldgs from 3-4 storeys retail/comm/parking	WLEP 1995 DCP 2002	16.5	3:1		27/06/2012	IRPP	19.2	16%	3:1:1			☒
						WLEP 1995 DCP 2002	13	1:1:1				14.87	14%	1.08:1			☒
25	60/2012	15/02/2012	\$ 6,721,000	321 New South Head Rd, Double Bay (Essence)	demo existing build new 4 storey resi	WLEP 1995	9.5	0.625:1		20/05/2013	DCC	11.1	17%	1.84:1	194%		☒
26	59/2012	15/02/2012	\$ 10,846,000	315-317 New South Head Rd, Double Bay (Essence)	demo existing bldg build new 4 storey resi	WLEP 1995	18	0.875:1		11/03/2013	Council	13.4		1.94:1	122%		☒
27	136/2012	2/04/2012	\$ 8,187,355	16-22 Bay St, Double Bay (Bay Residences)	demo existing above GF Build new 4 storey resi / retail	WLEP 1995 DCP 2002	13.5	2.5:1		3/12/2012	DCC	18.1	34%	3.15:1	26%		☒
28	404/2013	10/09/2013	\$ 7,119,124	535-537 New South Head Rd Double Bay	demo existing build new 4/5 storey resi	WLEP 1995	15	1:1		16/06/2014	DCC	13.2		1.45:1	45%		☒
2	568/2013	13/12/2013	\$ 2,814,796	376-382 New South Head Rd, Double Bay (Fives)	change L4 to resi, add new L5 resi	WLEP 1995 DCP 2002	13.5	3:1		7/07/2014	DCC	19.4	44%	4.2:1	40%		☒
25	235/2014	12/06/2014	\$ 7,358,000	321 New South Head Rd, Double Bay (Essence)	demo existing build new 4 storey resi	WLEP 1995	9.5	0.625:1		7/09/2015	council	14.1	43%	2.16:1	246%		☒

Summary of Council Approvals outside Controls

31	256/2014	12/06/2014	\$ 5,544,000	327 New South Head Rd, Double Bay	demo existing build new 4 storey resi	WLEP 1995	9.5	0.625:1		5/08/2015	DCC refused	14.5	53%	2.0:1	220%		✓	e
32	571/2014	19/12/2014	\$ 12,441,220	16-18 Cross St, Double Bay (The Hunter - TOGA)	demo existing build new 6 storey resi / retail	WLEP 1995 DCP 2002	13.5	2.5:1		25/07/2016	Council	20.75	54%	4.54:1	82%	✗		e
33	214/2015	7/05/2015	\$ 4,600,000	357-359 New South Head Rd, Double Bay	demo existing build 5 storey resi / retail	WLEP 1995 DCP 2002	13.5	2.5:1		31/10/2016	Council refused	15.87	18%	3.68:1	47%		✓	e
34	390/2015	31/07/2015	\$ 21,195,129	20-26 Cross St Double Bay (1788 Residences - ex Roche)	demo existing build new 6 storey resi / retail	WLEP 2014	14.7	2.5:1		12/09/2016	Council	21.21	44%	3.5:1	40%	✗		e
35	367/2016	30/08/2016	\$ 8,884,137	12 William St, Double Bay	demo existing build new 4 storey resi with roof terraces	WLEP 2014	10.5	1:1		9/03/2017	refused	14.09	34%	1:1			✓	e
36	66/2017	24/02/2017	\$ 5,526,921	319 New South Head Rd, Double Bay	demo existing build new 4 storey resi	WLEP 2014	9.5	1:1		23/10/2017	DCC	12.8	35%	1.16:1	16%	✗		c
2	125/2017	31/03/2017	\$ 1,669,085	374 New South Head Rd, Double Bay (Fivecx)	374 NSW Rd added, add 2 storeys	WLEP 2014	14.7	2.5:1		27/11/2017	Council	23.2	58%	4:1	60%	✗		c
				376 - 382 New South Head Rd, Double Bay (Fivecx)			14.7	3:1				23.2	58%	4.4:1	47%	✗		c
33	303/2017	6/07/2017	\$ 4,651,276	357-359 New South Head Rd, Double Bay	demo existing build 5 storey resi / retail	WLEP 2014 DCP 2003	14.7	3:1		currently under review		16.05	9%	3.64:1			???	d
99	359/2017	4/08/2017	\$ 24,441,088	2 Guilfoyle Ave Double Bay	demo existing build new 7 storey bldg	WLEP 2014	14.7	2.5:1		currently under review		23.62	63%	2.6:1	4%		???	f
				30-36 Bay St, Double Bay			18.1	3:1	reqd			23.62	31%	3.8:1	27%	exc/	???	f

NOTES

- a project approved but never built
- b couldn't find data on Council website but it was listed in staff report on DA 324/2003 to DCC 20/10/2003
- c Council agreed project suitable to go to Planning Proposal process. PP later changed controls to make comply.
- d project currently under review
- e Council followed controls by refusing development
- f Anko Double Bay Pty Ltd Development