

SAY WHAT YOU MEAN AND MEAN WHAT YOU SAY PLAIN SPEAKING CONDITIONS

by
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1. Introduction

The words “say what you mean” mean that you should say what you mean. It is a direction to the person who is doing the saying.

The words “mean what you say” are exactly the same words but they are in a different order. By the words being in this order, the emphasis is on the word mean. This is also a direction to the person doing the saying, but in addition it is a direction to that person to consider the people who will be seeking to understand the meaning of those words. It follows that this will be the only reference from me to the topic “Plain speaking conditions” as I will be examining “Plain meaning conditions”.

Put simply, this is a paper about understanding the meaning of words: interpretation.

2. What is plain English?

Writing in plain English does not mean applying a set of inflexible rules. Nor does it consist solely of simplifying your language. Writing in plain English means using a range of different elements – language, structure, content, style and presentation –

in ways that 'concentrate on meeting the needs of the readers for whom the document is designed' ¹.

Its critics see plain English as being incompatible with complex concepts and the need for precision in legal documents. They misrepresent plain English writing as simply reducing language to kindergarten level. On the contrary, plain English uses 'a full version of the language, including all the features of normal adult English'². Nevertheless some documents will remain complex and difficult to understand because of their very subject matter: plain English can simplify the task of interpreting the subject matter but cannot always simplify the subject matter itself. A document written in plain English uses whatever language most effectively presents the writer's ideas to the reader, however complex those ideas may be. At times, the only way to describe something precisely is by using technical terms; you will achieve clarity and accuracy only if you use those terms.

If you are writing for a target group familiar with technical terms, using them will not reduce the group's understanding of the document. However, if you are concerned that essential technical terms will reduce the understanding of a particular reader group, consider including definitions or explanations.

In every situation, the result should be an efficient and effective document that is clear as possible to its readers.³

3. Consider more than just words.

In its 1990 report on access to the law, the Law Reform Commission of Victoria identified three specific causes for incomprehensible drafting – defective language, defective organisation of ideas, and defective layout and format.

Plain English...involves the techniques for clear communication. For instance, it is concerned with way the words are set out on the page, the number of words on the page and the number of words in a sentence.

¹ Leah, John 'The advantages of plain legal language' paper presented at the 29th Australian Legal Convention, Brisbane, 24-26 September, 1995.

² Law Reform Commission of Victoria Report No. 9 Appendix 1 Plain English and Law: guidelines for drafting in plain English, The Government Printer, Melbourne 1987.

³ Ros Macdonald & Deborah Clark-Dickson: Clear and precise writing skills for today's lawyer. Thomson Custom Publishing.

That is why just as much attention will be paid to the way the words are set out on the page as will be paid to the words themselves.⁴

Giving a document the ‘small word short sentences’ treatment does not amount to using plain English techniques. The plain English approach requires a writer to think about word usage, sentence construction, organisation of ideas, document structure, design and appearance. Commentary about plain English tends to focus on vocabulary, failing to recognise that a plain English approach includes many other elements. Clarity is influenced by numerous factors, all of which contribute to making a complex document accurate and easily understood. Each element should be applied in a manner that is sensitive to the needs of the reader. Each element needs to be used creatively to suit the particular case.⁵

4. Aid precision by revealing hidden deficiencies

Most legal writing could be trimmed to a third of its length with no loss of meaning, and some gain: as the water level falls...previously hidden rocks appear.⁶

You do not need to make a choice between plain language and precision. As plain language expert Joseph Kimble points out, plain language is designed to achieve effective communication through both simplicity and precision.

If anything, plain language is more precise than traditional legal writing because it uncovers the ambiguities and errors that traditional style, with all its excesses, tends to hide.⁷

A plain English document should communicate the right information in an appropriate way to its intended readers. To reach this goal, the information must be precise, and plain language can help to achieve precision.

You can't hide behind gobblegook⁸ or convoluted language – it's all exposed when you draft in plain English.⁹

⁴ Kimble Joseph, ‘Answering the Critics of Plain Language’, 5 The Scribes Journal of Legal Writing, 1994-95.

⁵ Leahy, John, ‘The advantages of plain legal language’, paper presented at the 29th Australian Legal Convention, Brisbane, 24-25 September 1995.

⁶ Adler Mark, ‘Alphabet soup’ New Law Journal (26/7/91). www.adler.demon.co.uk/alphabet.htm (9/3/2000)

⁷ Kimble Joseph ‘Writing for Dollars, Writing to Please’ 6 The Scribes Journal of Legal Writing, 1996-97.

⁸ Colloquial language characterised by circumlocution and jargon.

Complicated writing can easily hide mistakes. Plain English helps to expose errors when you still have time to correct them. It also helps avoid the complications to which errors may contribute.

5. Balance simplicity, clarity and legal certainty

Plain language and legal effectiveness are compatible. A plain language version of a legal document must capture the legal nuances of its traditional alternative.¹⁰

If it fails to do so, it is not written in plain English.

Traditional legal writing is often verbose, littered with archaic words and phrases, and organised in a style that does not reflect normal thought processes. The writer may be trying to ensure the document covers all possible eventualities, but ‘more words do not increase accuracy’¹¹. Nor do obscurity and complexity promote understanding. An advanced text...will remain complex. But the complexity will reside solely on the subject matter ...[C]omplexity in subject matter does not call for complicated convoluted language¹².

Equally, a document is not written in plain English if it is simplified to the point of legal uncertainty. Simplicity is not achieved easily. A clear document will often seem simple, yet it may be the end result of a difficult process of uniting several complex elements to create a product that communicates easily and effectively.¹³

6. Starting points

A plain language document says everything you want it to say, but does not include anything irrelevant to its purpose. It is organised in a logical flow that allows the reader to grasp the overall message or seek out a particular point as quickly as possible. A well-thought-out plan is much easier to turn into clear and well-organised text. A clear and well-organised document saves time for both writer and reader; if the central message of a document comes through clearly, the reader will grasp its message immediately.

⁹ Butt Peter, ‘*Legal issues in plain language*’ paper presented at the 29th Australian Legal Convention, Brisbane 24-25 September, 1995.

¹⁰ Butt Peter, Ditto

¹¹ Wallace Jude, *Legal writing for good business*, 2nd edition, Law Institute of Victoria, Melbourne and Queensland Law Society, Brisbane, 1994.

¹² Eagleson Robert, ‘*The case for plain language*’ address at Osgood Hall 15th July 1988 published by the Canadian Law Information Centre, Toronto, Ontario, 1988.

¹³ Eagleson Robert, Ditto

To produce a successful plain language document, you must consider-

- the **audience**
- the document's **overall framework and logic**, including consideration of a numbering system
- the **construction of elements** within the document – phrases, sentences, paragraphs
- the **language**
- the document's **presentation** – typeface, a logical order of contents, headings, devices such as graphics to help explain points.

7. Legal fossils

In its 1987 report on plain English and the law, the Law Reform Commission of Victoria described legal writing in this way:

Many legal documents are unnecessarily lengthy, overwritten, self conscious and repetitious. They consist of lengthy sentences and involved sentence construction. They are poorly structured and poorly designed. They suffer from elaborate and often unnecessary cross-referencing. They retain archaic phrases. They use technical terms and forging words and phrases even when English equivalents are readily available. They are unintelligible to the ordinary reader and barely intelligible to many lawyers.¹⁴

At times technical language is unavoidable and necessary. Frequently, however, you can find a simpler alternative that says the same thing but makes your document much easier to understand. The primary reason for using plain language is to enhance communication. Legal concepts are inherently complex, but plain language can simplify the way you communicate the concepts to your readers.

You can check your document for accuracy at the same time you are considering your language to see if there is a simpler option. People who take the time to redraft their precedents and clauses into plain language are frequently surprised by the deficiencies discovered in the original documents. You might uncover errors, and you might find a better, more precise way of getting your message across.

Legalese includes a large group of words that were in common use several hundred years ago and still appear in legal prose ‘with no claim to precision then or now’.¹⁵ Many of these words serve no purpose and can be omitted completely; others have better modern day substitutes.

Word or phrase	Suggested alternative	Suggested action
aforesaid	the	omit and rewrite
henceforth	now	omit and rewrite
hereafter	after this	omit or rewrite
hereby	then, by this, by way of this, because of this	omit
herein		omit
hereto	to it	omit
hereunto	on it	omit
herewith	with it	omit
notwithstanding	despite, even though, even if, yet, but	rewrite
null and void	of no legal effect, without legal effect	rewrite
said (as an adjective – ‘the said council’)	the, this, that	omit
shall (<i>future</i>)	will	rewrite
shall (<i>imperative</i>)	must	rewrite

Compound prepositions

Many compound prepositions are predominantly associated with legal writing. Often, you can reduce compound prepositions to something shorter, less pompous, and easier to understand; think about alternatives:

DO NOT USE	ALTERNATIVES
as a result	because

¹⁴ Law Reform Commission of Victoria Report No. 9 Appendix 1, *Plain English and law: guidelines for drafting in plain English*, The Government Printer, Melbourne, 1987.

¹⁵ Mellinkoff David, *Legal Writing: sense and nonsense*, West Publishing, Minnesota 1982.

in the event that
until such time as

when, if
until, when

8. How to make documents easier to read

Draw your readers' attention to information they need to know by-

- dividing the text into short sections
- using plenty of headings
- using emphasis techniques and variety in styles to give different weight to different material
- designing your document carefully
- using reader-friendly aids such as lists, tables, graphs, etc.
- inserting detailed or peripheral information as a schedule or attachment.

9. Use design as a 'road map' for your readers

The common 'road map' found in most cars enables a reader to understand the inter-relationship between country towns. A more detailed road map takes the form of a street directory and that enables a reader to understand the inter-relationship between all the roads in the directory. By looking in the front cover a reader finds a map covering the whole area that the directory is limited to and by locating the area of interest the reader is provided with a number over that locality. Turning to the page with the corresponding number the streets in the area are found. Alternatively, if the reader knows the name of the road and the locality an index identifies the page number. By using this technique it is also possible to discover the co-ordinates. Putting that sentence into plain English it means: the directory tells you how far to run your finger across the page before stopping and then run your finger up the page before stopping and when you finally stop you have your finger on the road you want. The plain English version is much longer but it should be easier to understand, particularly for readers who are unfamiliar with the concept of "co-ordinates". The alternative, of course, is to use the word "co-ordinates" and then use the technique identified in the last dot point above, by having a definition of "co-ordinates" in a schedule.

It is possible to design conditions of consent in a similar style.

Limiting each paragraph to one issue gives a clean appearance and makes the document look easy to read and understand.

Group your material to reflect different ideas. Use major and minor headings and paragraphing to indicate major and minor ideas. You may also use bullet points or a numbering system to mark divisions.

Long sections are confusing and visually unappealing. Short sections are easier to organise and understand. They allow material to be broken up into easily understood segments because each section contains a limited amount of information.

Long sections can appear dense, difficult and forbidding. If you write in short sections you are able to introduce white space, which makes the document look easier to read and understand, even before someone starts reading.

Compare the following examples:

Example 1

Motor vehicle

A motor vehicle includes a machine or apparatus designed for propulsion completely or partly by petrol, diesel, oil, LPG, or other motor spirit, oil or gas, electricity, steam or other mechanical power, and a motor cycle, and a caravan, caravan trailer or other trailer designed to be attached to a motor vehicle. It is immaterial whether the motor vehicle is incapable of use because of a mechanical or other defect or because a part has been removed.

Example 2

Motor vehicle

1. A motor vehicle includes-
 - (a) a machine or apparatus designed for propulsion completely or partly by petrol, diesel, LPG, or other motor spirit, oil or gas, electricity, steam or other mechanical power; and
 - (b) a motorcycle; and
 - (c) a caravan, caravan trailer or other trailer designed to be attached to a motor vehicle.
2. It is immaterial whether the motor vehicle is incapable of use because of a mechanical or other defect or because a part has been removed.

Paragraphing:

There are a number of rules about paragraphing in legal documents. Most are merely the application of common sense.

- Paragraphing is used only when a sentence can be divided into two or more parts.
- Words to be included in paragraphs must be introduced by and be grammatically connected with the words called *introductory words*. The *introductory words* must be able to be read separately with each paragraph.
- Words after the paragraphs (*resuming words*) must be capable of being read with each preceding paragraph separately and with the introductory words.
- If further paragraphs continue after resuming words, those paragraphs must be able to be read with the resuming words, and the paragraph notation continues after the resuming words. It does not restart.

Example:

The tenant must replace all broken-

- (a) light bulbs, starters and tubes in the Premises; and
- (b) glass in the Premises that has been damaged by the Tenant's negligence or deliberate act, [*paragraphs*]
but is not liable for damage caused by [*resuming words*]
- (c) inherent defect in the glass or the Building; or
- (d) the fitting of the glass; or
- (e) the Landlord's negligence or deliberate act.

[*continuing notation of paragraphs*]

- If the provisions in a set of paragraphs or subparagraphs are intended to be cumulative in effect, **and** may be inserted between paragraphs or subparagraphs; if they are intended to be alternative, **or** may be inserted between the provisions.
- If there are many paragraphs or subparagraphs the tradition is that the "and" or the "or" usually appear only at the end of the second last paragraph or subparagraph.

Note that sometimes "and" can mean "or" so that if a shop is able to sell cakes and biscuits it can sell cakes or biscuits.

Drafting in clauses and subclauses

An alternative form of paragraphing is known as the **report style** or **drafting in subclauses**.

The usual rules for this method are-

- Each clause is a single sentence
- Each subclause is also a single sentence
- A clause should deal with only one obligation or right
- Subclauses should be used, rather than separate clauses, to deal with different aspects of the same right or obligation, or very closely related rights or obligations
- Introductory or resuming words are not used
- A heading and number are given to the main clause
- A decimal system of numbering is used (1, 1.1 etc).

Use headings as signposts

Headings help outline the document for both writer and reader. They give your readers signposts to different areas of your document.

Develop headings carefully. They are one of the most useful tools you can use to produce an appealing, understandable document.

Also consider using aids such as page headers and footers. In a longer document, these allow readers to check where they are.

Headings attract attention. Plentiful, informative headings make a document easier to follow. They help readers find their way through a document and locate important points.

Informative headings are more specific. Consequently, they are more helpful to the reader than shorter headings that could refer to several pieces of information.

Headings should contain sufficient information to be useful, however, they should not overwhelm the material in the text they introduce. For example avoid headings with one word answers.

Headings can take different forms, such as a topic, a statement, or a question. The question format in particular will enable a reader to skim through those questions which have standard or predictable answers.

10. The zero tolerance approach to punctuation

A book by Lynne Truss called “Eats, Shoots and Leaves. The zero approach to punctuation”¹⁶ has the introduction: “Either this will ring bells for you, or it won’t. A printed banner has appeared on the concourse of a petrol station near to where I live. ‘Come inside,’ it says, ‘for CD’s, VIDEO’s, DVD’s, and BOOK’s’.

If this satanic sprinkling of redundant apostrophes causes no little gasp of horror or quickening of the pulse, you should probably put down this book at once. By all means congratulate yourself that you are not a pedant or even a stickler; that you are happily equipped to live in a world of plummeting punctuation standards; but just don’t bother to go any further. For any true stickler, you see, the sight of the plural word ‘Book’s’ with an apostrophe in it will trigger a ghastly private emotional process similar to the stages of bereavement, though greatly accelerated. First there is shock. Within seconds, shock gives way to disbelief, disbelief to pain, and pain to anger. Finally (and this is where the analogy breaks down), anger gives way to a righteous urge to perpetuate an act of criminal damage with the aid of a permanent marker....

Everywhere one looks, there are signs of ignorance and indifference. What about that film *Two Weeks Notice*? Guaranteed to give sticklers a very nasty turn, that was – its posters slung along the sides of buses in letters four feet tall, with no apostrophe in sight. I remember, at the start of the *Two Weeks Notice* publicity campaign in the spring of 2003, emerging cheerfully from Victoria Station (was I whistling?) and stopping dead in my tracks with my fingers in my mouth. Where was the apostrophe? Surely there should be an apostrophe on that bus? If it were ‘one month’s notice’ there would be an apostrophe (I reasoned); yes, and if it were ‘one week’s notice’ there would be an apostrophe. Therefore ‘two weeks’ notice’ requires an apostrophe! ... Sticklers never read a book without a pencil at hand, to correct the typographical errors. In short, we are unattractive know-all obsessives who get things out of proportion and are in continual peril of being disowned by our exasperated families.”

It is a book worth reading and I commend it to you.

She talks about forming a militant wing to the Apostrophe Protection Society.

A passage I particularly like is:

“Punctuation has been defined many ways. Some grammarians use the analogy of stitching: punctuation as the basting that holds the fabric of language in shape. Another writer tells us that punctuation marks are the traffic signals of language: they tell us to slow down, notice this, take a detour, and stop. I have even seen a rather fanciful reference to the full stop and comma as “the invisible servants in fairy tales – the ones who bring glasses of water and pillows, not storms of weather or love”. But best of all, I think, is the simple advice given by the style book of a national newspaper: that punctuation is ‘a courtesy designed to help readers to understand a story without stumbling’.

Isn’t the analogy with good manners perfect? Truly good manners are invisible: they ease the way for others, without drawing attention to themselves. It is no accident that the word ‘punctilious’ (‘attentive to formality or etiquette’) comes from the same root word as punctuation. As we shall see, the practice of ‘pointing’ our writing has always been offered in a spirit of helpfulness, to underline meaning and prevent awkward misunderstandings between writer and reader...

To be fair, many people who couldn’t punctuate their way out of a paper bag are still interested in the way punctuation can alter the sense of a string of words. It is the basis of all ‘I’m sorry, I’ll read that again’ jokes. Instead of ‘What would you with the king?’ you can have someone say in Marlowe’s *Edward II* ‘What? Would you? With the king?’ The consequences of mispunctuation (and re-punctuation) have appealed to both great and little minds, and in the age of the fancy-that email a popular example is the comparison of two sentences:

A woman, without her man, is nothing.

A woman: without her, man is nothing.

Which, I don’t know, really makes you think, doesn’t it? Here is a popular ‘Dear Jack’ letter that works in much the same fundamentally pointless way:

Dear Jack,

I want a man who knows what love is all about. You are generous, kind, thoughtful. People who are not like you admit to being useless and inferior. You have ruined me for other men. I yearn for you. I have no feelings whatsoever when we’re apart. I can be forever happy – will you let me be yours?

Jill

¹⁶ Profile Books Ltd, London, 2003 Printed and bound in Australia by Griffin press ISBN 1 86197 6127

Dear Jack,

I want a man who knows what love is. All about you are generous, kind, thoughtful people, who are not like you. Admit to being useless and inferior. You have ruined me. For other men I Yearn! For you I have no feelings whatsoever. When we're apart I can be forever happy. Will you let me be?

Yours,

Jill"

In lamenting the slack standards in British schools today Lynne Truss gives an example of a child sitting a County Schools exam in 1937 would be asked to punctuate the following puzzler: "Charles the First walked and talked half an hour after his head was cut off" (answer: "Charles the First walked and talked. Half an hour after, his head was cut off").

Apostrophe

If there are any greengrocers or shopkeepers in the audience I will set out how apostrophes work.

1. **Its** is a possessive pronoun: **its program, its government.**

The company must file its return.

2. **It's** is a contraction of the third person present tense (**it is**) of the verb **to be**.

Like most public phones, it's out of order.

It's time for a beer.

3. A simple plural is *not* accompanied by an apostrophe.

INCORRECT

CORRECT

I forgot to put the CD's away. I forgot to put the CDs away.

4. When referring to something belonging to something else, such as a bin and its lid, insert an apostrophe to indicate possession.

INCORRECT

CORRECT

I realised that I had forgotten

I realised that I had forgotten

To put the bins lid out.

to put the bin's lid out.

5. An apostrophe is placed *after* a simple plural to indicate plural possession.

INCORRECT

The Macdonald's car has broken down.

(Ironically, the spell-check on my computer has chosen the incorrect version).

CORRECT

The Macdonalds' car has broken down.

6. If the plural form of something is expressed by a different word rather than by adding **s**. (woman/women, child/children), plural possession is expressed by adding **an apostrophe followed by s**.

INCORRECT

He specialised in womens' studies.

CORRECT

He specialised in women's studies.

7. An apostrophe may be used to indicate a contraction of two (or more) words into one word. For example, **who is** contracts to **who's**, not **whose**, which is the possessive case of the pronoun **who**. An apostrophe can also be used to indicate where a word has been contracted by removing one or more letters: **o'er** for **over**.

11. Five-step process for redrafting

When redrafting a prose there are five steps in assisting in putting it into plain English:

Step 1 – Separate out the statements.

Step 2 - Group the statements.

Step 3 – Deal with the traditional language by replacing it with plain language.

Step 4 – Check for possible defined terms.

Step 5 – Format and finalise.

12. Existing conditions reconditioned

The following conditions were imposed by a council in a case in which I was acting for the applicant.

The comments from an applicant's perspective are included in bold. While reviewing the conditions I thought about the concept of "standard conditions" in the nature of Model Provisions and the words in italics are

proposed to be included in the “standard conditions” which appear at the end of the text:

That the Council grant deferred commencement consent in accordance with the provisions of section 80(3) of the Environmental Planning and Assessment Act 1979.

The consent is not to operate until the applicant has satisfied Council as to the following matter:

The roof top terrace area and all associated works on the roof top, including the provision of planting upon the roof, is to be deleted from the plans. In this regard, the main stairwell and is to be modified to allow access to the ground and first floor only, including an associated reduction in the height of the built form surrounding the stairwell.

No internal access shall be provided to the roof top.

Upon satisfying Council as to the above matters the following conditions apply:

Q. Why is it necessary to say this when in fact the plans referred to in Schedule B provide for precisely this amendment which was a condition of the consent by the court?

A. Get rid of schedule A.

Q. Why not just leave the condition in there and get an approval and get on with it?

A. Because the condition requires that “the council” needs to be satisfied which means that we will be in the line waiting to go before the council and going through the whole process again and subject to the whim of someone who has had an “appeal upheld” recorded against them. And even if it gets listed before the council the winds can change before the decision is reached and it can be the subject of “further report” or another trick.

SCHEDULE B

A. APPROVED DEVELOPMENT

1. APPROVED DEVELOPMENT

The development must be in accordance with:

Architectural Plan No. DA00 Rev C, DA01 Rev F, DA11 Rev F, DA12 Rev F, DA13 Rev E, DA20 Rev E, DA21 Rev F and DA22 Rev E, tables and documentation prepared by Applicant’s Architect, dated 20/07/07, and received by Council on 23/07/07, except where amended by the following conditions of consent;

Landscaping details as per Landscape Plan No. LC01B, prepared by Applicant's Landscape Designer, dated 28/02/07, and received by Council on 13/03/07;
BASIX Certificate No. 125749S dated 07/03/07, and received by Council on 13/03/07;

The Site Waste and Recycling Management Plan (SWRMP) and Checklist, in accordance with the SWRMP Checklist of Part G1, Council DCP 2006.

2. LANDSCAPE AMENDMENT

The landscape plan is to be amended to include two additional local native trees of minimum pot size of 45 litres. Proposed species are to be approved by Council's Tree Management Officer.

The two 'kentia palms' *Howea forsteriana* included in the landscape plan are to be substituted with 'Cabbage Tree Palms' *Livistona Australia*.

The 'Bleeding Hearts' *Clerodendrum splendens* included in the landscape plan are to be substituted with *Pandorea pandorana*.

3. USE OF DWELLING

The premises are to be used only as a single unit dwelling house.

Q: The development application was stated to be for a single dwelling house, so why gild the lily?

A: Council is being cautious, and so they should be, because they identified the plans that apply but they did not say the consent is in accordance with the development application that was lodged with those plans.

4. SWIMMING POOLS

The following requirements apply to the use and operation of the approved pool:

The pool water being treated by an approved water treatment and filtration unit.

The pool is to be fitted with a cover, that shall be fitted when the pool is not in use to minimise evaporation and conserve water.

To prevent noise nuisance to surrounding properties, the pool filtration motor and pump unit is to be housed within a ventilated soundproof enclosure.

Q. This is a normal pool, so why shouldn't it be subject to the same conditions as any other new pool?

A. Good question...put this in the standard conditions.

COMPLIANCE PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

5. SECTION 94A CONTRIBUTION

A cash contribution is payable to Council pursuant to section 94A of the Environmental Planning and Assessment Act 1979 and the " Council Development Contributions Plan 2006" in accordance with the following:

(a) A cost report indicating the itemised cost of the development shall be completed and submitted to Council:

1. *Where the total development cost is less than \$500,000:*

" Council Cost Summary Report"; or,

2. *Where the total development cost is \$500,000 or more:*

" Council Registered Quantity Surveyor's Detailed Cost Report".

A copy of the required format for the cost reports may be obtained from Council Chambers

(b)Prior to the issue of the Construction Certificate, evidence must be provided that the levy has been paid to Council in accordance with this condition or that the cost of works is less than \$100,000.

Council Development Contributions Plan 2006 may be inspected at Council Chambers.

Advisory Note

A development valued at \$100,000 or less will be exempt from the levy.

A development valued at \$100,001 - \$200,000 will attract a levy of 0.5%.

A development valued at \$200,001 or more will attract a levy of 1% based on the full cost of the development.

Q. The development involved is well in excess of \$500,000 so why do we need to read all this irrelevant information?

A. It should be in the standard conditions and this condition should read: A contribution shall be paid to council under its section 94A policy in accordance with the cost calculated by the Council Registered Quantity Surveyor's Detailed Cost Report.

6. **SECURITY DEPOSIT**

A deposit or guarantee satisfactory to Council for the amount of \$10,000 must be provided as security for the payment of the cost of making good any damage that may be caused to any Council property as a consequence of this building work.

This deposit or guarantee must be established prior to the issue of the Construction Certificate. The full amount of the difference after recovery of Council's cost for any repair of damage to Council property will be refunded after satisfactory completion of the building work to the person who paid the deposit.

Q. Why not say the security deposit is \$10,000, full stop?

A. Too simple...put the full provision in the standard conditions and state the amount in these conditions.

7. **LONG SERVICE LEVY**

A long service levy, as required under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986, is to be paid in respect to this building work. In this regard, proof that the levy has been paid is to be submitted to Council prior to the issue of a Construction Certificate.

Note: *Council acts as an agent for the Long Service Payment Corporation and the levy may be paid at Council's office. The levy rate is 0.35% of building work costing \$25,000 or more.*

8. **NO BUILDING WORKS PRIOR TO RELEASE OF CONSTRUCTION CERTIFICATE**

The building work, including demolition, must not be commenced until:

(a) a Construction Certificate has been obtained from Council or an Accredited Certifier in accordance with Section 81A(2) of the Environmental Planning & Assessment Act, 1979; and

(b) a Principal Certifying Authority has been appointed and Council has been notified of the appointment in accordance with Section 81(A)(2)(b) of the Environmental Planning & Assessment Act, 1979 and Form 7 of Schedule 1 of the Regulations; and

(c) Council is given at least two days Notice in writing of the intention to commence the building works.

*The owner/applicant may make application to Council or an Accredited Certifier for the issue of a Construction Certificate and to be the **Principle (no need to get pedantic, just let it go through)** Certifying Authority.*

9. HOARDING REQUIRED

A standard A-Class hoarding designed and constructed in accordance with the requirements of the Work Cover Authority being erected on the street alignments of the property, prior to the commencement of building operations, and such hoardings to be maintained during the course of building operations. Details of the hoarding are to be provided to Council prior to issue of the Construction Certificate.

Where the hoarding is to be erected over the footpath or any public place, the approval of Council must be obtained prior to the erection of the hoarding.

10. SITE WASTE AND RECYCLING MANAGEMENT PLAN

A Site Waste and Recycling Management Plan (SWRMP) Checklist Part 2 shall be submitted to the Principal Certifying Authority for approval in accordance with Part G1, DCP 2006 prior to the issue of the Construction Certificate. In this regard, Council expects demolition and excavated material to be reused and/or recycled wherever possible.

The builder and all subcontractors shall comply with the approved SWRMP (Part 1 and 2) at all times during construction. At least one copy of the SWRMP is to be available on site at all times during construction.

11. EROSION, SEDIMENT AND POLLUTION CONTROL

Erosion, sediment and pollution control measures are to be implemented on this site. These measures are to be in accordance with Council's Stormwater Policy and are to be implemented prior to commencement of any work or activities on or around the site. Details of these measures are to be submitted to the Principal Certifying Authority prior to the issuing of a Construction Certificate.

12. CONSTRUCTION VEHICLE PLAN OF MANAGEMENT

Submission of a "Construction Vehicle Plan of Management" for the routing and control of construction vehicles accessing and exiting the site. Such plan to address the hours of operation, the employees' vehicles, holding areas for vehicles wanting to access the site and truck works and provide a means of ensuring vehicular and pedestrian access to adjoining resident's properties for the duration of the works.

The "Construction Vehicle Plan of Management" is to be approved by Council prior to the issue of a Construction Certificate and the undertaking of any demolition, remediation or construction on the site.

Q. Why should the "Construction Vehicle Plan of Management" need to be approved by Council prior to the issue of a construction certificate?

A. The "Council" should not be involved with this level of detail and it should be a person in a nominated position of council so that the delays in getting it before a meeting of council are avoided.

13. STORMWATER MANAGEMENT

*All seepage and surface waters and roof waters being collected and disposed of in accordance with Council's Stormwater Policy and this may involve the provision of an on-site detention system (OSD). Details prepared by a Hydraulics Engineer are to be submitted to and approved by the **Principle (leave it alone)** Certifying Authority prior to the issue of a Construction Certificate.*

Q. There is an on-site detention system shown on the now approved plans, why do they use the word "may" now?

A. This is a strong case for making this a standard condition, with perhaps a short reference in the detailed conditions.

14. ENGINEERING DETAILS

Structural details prepared and certified by a practicing Structural Engineer being furnished to Council or Accredited Certifier in connection with all structural components prior to the issue of a Construction Certificate.

15. BASIX - NEW DWELLING HOUSE

*The undertakings provided in the Basix Certificate Number 125749S shall be provided for in the Construction Certificate plans and documentation prior to the issue of the Construction Certificate plans. *The Principal Certifying Authority shall be responsible for ensuring that all the undertakings are satisfied prior to the issue of an Occupation Certificate.**

The above condition is a prescribed condition under the Environmental Planning and Assessment Act Regulations clause 97A and the above Basix commitments are mandatory and can not be modified under Section 96 of the Environmental Planning and Assessment Act, 1979.

16. USE OF RENEWABLE TIMBERS

*Council requires, wherever possible, the use of renewable timbers and/or plantation timbers such as Radiata Pine or Oregon as an alternative to the use of non-renewable rainforest timber products in buildings so as to help protect the existing areas of rainforest. In this regard, a schedule of proposed timber products to be used in the building is to be submitted for approval by the **Principle (just give up on it, will you)** Certifying Authority prior to the issue of the Construction Certificate. Where the applicant is to use timbers not recommended in Council's Policy, reasons are to be given why the alternative timbers recommended cannot be used.*

COMPLIANCE PRIOR TO AND DURING CONSTRUCTION

17. PRIOR TO SITE WORKS

*The **Principal (what happened there? Just when you had given up?)** Certifying Authority must be informed in writing before any site works, building or demolition commences of:*

the name and contractor licence number of the licensee who has contracted to do, or intends to do, work ; or

the name and permit number of the owner/builder who intends to do the work; and any change to these arrangements for doing of the work.

18. HOME BUILDING ACT

The builder or person who does the residential building work shall comply with the applicable requirements of Part 6 of the Home and Building Act, 1989. In this regard a person must not contract to do any residential building work unless a contract of insurance that complies with this Act is in force in relation to the proposed work. It is the responsibility of the builder or person who is to do the work to satisfy the Principal Certifying Authority that they have complied with the applicant requirements of Part 6, before any work commences.

19. CONSTRUCTION SIGNS

Prior to commencement of any works on the site and during construction a sign shall be erected on the main frontage of the site detailing the name, address and contact details (including a telephone number) of the Principal Certifying Authority and principal contractor (the coordinator of the building works). The sign shall be clearly legible from the adjoining street/public areas and maintained throughout the building works.

20. EXCAVATION AND BACKFILLING

All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards and must be properly guarded and protected to prevent them from being dangerous to life or property.

21. OBSTRUCTION TO PUBLIC AREAS

If a public place or pedestrian vehicular traffic may be obstructed because of the carrying out of work involved in the erection or demolition of a building; or a public place is required to be enclosed in connection with the erection or demolition of a building; then:

a hoarding fence must be erected between the building site and the public place of the proposed building and the public place. If necessary, an awning sufficient to prevent any substance from, or in connection with, the work falling into the public place, is also to be erected;

the work is to be kept lit during the time between sunset and sunrise if the work may be of a sort of danger to persons using the public place; and

a hoarding, fence or awning is to be removed when it is no longer required for the purpose it was provided.

22. TOILET FACILITIES

Toilet facilities being provided on the work site in accordance with the requirements of Sydney Water.

23. DEMOLITION OR ALTERATION OF PRE 1987 BUILDINGS

At least five (5) days prior to the demolition, renovation work or alterations and additions to any building constructed before 1987, the person acting on the consent shall submit a Work Plan prepared in accordance with Australian Standard AS260-2001, Demolition of Structure and a Hazardous Materials Assessment by a person with suitable expertise and experience. The Work Plan and Hazardous Materials Assessment shall:

- (a) outline the identification of any hazardous materials, including surfaces coated with lead paint;*
- (b) confirm that no asbestos products are present on the subject land; or*
- (c) particularise a method of safely disposing of the asbestos in accordance with the Code of Practice for the Safe Removal of Asbestos NOHSC 2002 (1998);*
- (d) describe the method of demolition;*
- (e) describe the precautions to be employed to minimise any dust nuisance; and*
- (f) describe the disposal methods for hazardous materials.*

24. COMPLIANCE WITH WORKCOVER NSW REQUIREMENTS

All site works complying with the occupational health and safety requirements of WorkCover NSW.

25. SOIL AND WATER MANAGEMENT PLAN

A Soil and Water Management Plan (also known as an Erosion and Sediment Control Plan) shall be prepared according to SSROC's Soil and Water Management Brochure and the DEC's Managing Urban Stormwater: Construction Activities. This Plan shall be implemented prior to commencement of any works or activities. All controls in the Plan shall be maintained at all time. A copy of the Soil and Water Management Plan must be kept on site at all times and made available to Council officers on request.

26. STOCKPILES

Stockpiles of topsoil, sand, aggregate, soil or other material shall not be located on any drainage line or easement, natural watercourse, footpath or roadway and shall be protected with adequate sediment controls.

27. LOCATION OF BUILDING OPERATIONS

Building operations such as brick cutting, washing tools or brushes and mixing mortar are not permitted on public roadways or footpaths or in any locations which could lead to the discharge of materials into the stormwater drainage system.

28. TEMPORARY DIVERSION OF ROOF WATERS

Stormwater from roof areas shall be linked via a temporary downpipe to Council's stormwater system immediately after completion of the roof area. Inspection of the building frame will not occur until this is completed.

29. ALL BUILDING MATERIALS STORED ON SITE

All building materials and any other items associated with the development are to be stored within the confines of the property. No materials are to be stored on Council's footpath, nature strip, or road reserve without prior Council approval.

30. CONSTRUCTION HOURS

Demolition and building work must only be undertaken between the hours of 7am and 5pm on Mondays to Fridays and 8am to 3pm on Saturdays with no work to be carried out on:

(a) The Saturday (except minor renovation or refurbishment to a single dwelling construction) and Sunday which form part of public holiday weekends;

(b) Sundays and public holidays; and (c) On the Saturday (except minor renovation or refurbishment to a single dwelling construction) and Sunday which immediately precede or follow industry Rostered Days Off, as agreed by the CFMEU and the Master Builders Association of NSW.

Noise from construction activities shall comply with the Protection of the Environmental Operations (Noise Control) Regulation 2000.

31. CONSTRUCTION NOISE - PERIODS GREATER THAN 4 WEEKS AND NOT EXCEEDING 26 WEEKS

The LA10 level measured over a period of not less than 15 minutes when the construction site is in operation must not exceed the background (LA90) noise level by more than 10dB(A) when assessed at any sensitive noise receiver.

32. BUILDING CODE OF AUSTRALIA

All building work must be carried out in accordance with the requirements of the Building Code of Australia.

33. QUALITY OF CONSTRUCTION ACT - INSPECTIONS (DWELLING HOUSES CLASS 1 AND 10)

The building works are to be inspected during construction by the Principal Certifying Authority (PCA) and in accordance with the Building Legislation (Quality of Construction) Act 2002 and the Environmental Planning and Assessment Regulations. Also, documentary evidence of compliance with the relevant terms of conditions of development consent and standards of construction detailed in the Building Code of Australia is to be obtained prior to proceeding to the subsequent stages of construction and/or issue of an Occupation Certificate.

MANDATORY Critical Stage Inspections MUST be carried out by the PCA for work undertaken during specified stages of construction and prior to issuing an Occupation Certificate.

The specified MANDATORY inspections are:

In the case of a Class 1 and 10 building:

at the commencement of building work;

after excavation for, and prior to the placement of, any footings;

prior to pouring any in-situ reinforced concrete building element;

prior to covering of the framework for any floor, roof or other building element;

prior to covering any waterproofing in any wet areas;

prior to covering any stormwater drainage connections; and

after the building work has been completed and prior to any Occupation Certificate being issued in relation to the building.

The following additional inspections are required to be undertaken by the PCA:

sediment control measures prior to the commencement of building work;

foundation material prior to undertaking building work;

shoring of excavation works, retaining walls, piers, piling or underpinning works;

steel reinforcement, prior to pouring concrete;

prior to covering timber or steel framework for floors, walls and roofing, including beams and columns;

prior to installation of fire resisting construction systems (ie fire rated ceilings and walls); and

swimming pool fencing prior to filling the pool.

Note: Certification may be required from a suitably qualified person, in relation to specialist matters, verifying that particular works satisfy the relevant requirements of the Building Code of Australia and standards of construction.

34. CERTIFICATE OF SURVEY - LEVELS

All construction works shall be strictly in accordance with the Reduced Levels (RLs) as shown on the approved plans. Certification from a Registered Surveyor certifying ground, upper floor/s and finished ridge levels is to be submitted to the Principal Certifying Authority during construction and prior to continuing to a higher level of the building.

35. IN-SINK WASTE DISPOSAL SYSTEMS

The installation of in-sink waste disposal systems is prohibited.

36. WATER PROOFING

The floor and wall surfaces of the proposed bathrooms, ensuites and laundry being protected against water in accordance with the Building Code of Australia. The wet areas are to be examined and certified by an Accredited Certifier.

Note: Water proofing is to be in accordance with AS 3740 - Water Proofing of Wet Areas within residential buildings.

37. HOT TAP WATER SCALDING

To reduce the incidence of hot tap water scalding and, for the purpose of energy efficiency, all new or replacement hot water systems shall deliver hot water to a maximum 50 degrees Celsius at the outlet of all sanitary fixtures used for personal hygiene.

38. SMOKE ALARM SYSTEM

A smoke alarm system is to be installed within the building in accordance with the requirements of the Building Code of Australia.

39. STREET TREES

No existing street trees shall be removed without Council approval. A 1.8m high chain link wire fence or the like shall be erected around the existing street trees to

protect them from damage during construction. Where approval is granted for the removal of a street tree the applicant is to pay for its replacement with a super advanced tree of a species nominated by Council.

40. TREE PROTECTION

Precautions shall be taken when working near trees to ensure their retention, including the following:

Do not store harmful or bulk materials or spoil under or near trees;

Prevent damage to bark and root system;

Do not use mechanical methods to excavate within root zones;

Do not add or remove topsoil from under the drip line;

Do not compact ground under the drip line;

Do not mix or dispose of liquids within the drip line of the tree; and

All trees marked for retention must have a protective fence/guard placed around a nominated perimeter.

41. CONSTRUCTION OF SWIMMING POOLS

The following applies to the construction of swimming pools:

Reinforcement is to be inspected by an Accredited Officer or other suitably qualified person prior to the pouring of concrete;

The electrical wiring system for any proposed underwater artificial lighting installation to the pool being installed in accordance with the requirements of Australian Standard 3000, Part 1 - Wiring Rules;

The finished level of the proposed pool is not to exceed a maximum height of 300mm above the existing natural ground level;

To minimise the likelihood of accidental drowning, the swimming pool is to be provided with a child resistant safety fence, designed and constructed in accordance with the requirements of Australian Standard 1926-1993 "Fencing for Private Swimming Pools". This fencing is to be erected and inspected by the Principal Certifying Authority prior to the pool being filled with water; and

A final inspection of the completed pool is to be carried out by the Principal Certifying Authority prior to the pool being filled with water.

42. POOL DRAINAGE

Waste waters from the proposed pool being discharged into Sydney Water's sewerage system and in this regard, approved plans MUST be submitted to Sydney Water at least fourteen (14) days prior to commencement of building operations.

COMPLIANCE PRIOR TO AN OCCUPATION CERTIFICATE OR COMMENCEMENT OF USE

43. FINAL OCCUPATION CERTIFICATE

The Principal Certifying Authority prior to occupation or use of the development must issue a final Occupation Certificate. In issuing an Occupation Certificate, the Principal Certifying Authority must be satisfied that the requirements of Section 109H of the Environmental Planning & Assessment Act, 1979 have been satisfied.

44. POOL SIGN

An approved sign outlining details of resuscitation techniques for adults, children and infants must be placed in a prominent position, close to the pool prior to filling the pool with water. Signs are available from Council's Planning & Environmental Services Department.

45. INSPECTION OF POOL

A final inspection of the completed pool is to be carried out by the Principal Certifying Authority prior to the pool being filled with water.

46. REFILLING/"TOP-UP" OF SWIMMING POOL

Future water requirements for refilling and "top-up" to the swimming pool is to be obtained from rainwater provided from an on-site rainwater tank or equivalent. In this regard, full details of the proposed location and size of the rainwater tank are to be provided to Council prior to issue of the Construction Certificate.

47. LIGHTING

Any lighting on the site shall be designed so as not to cause nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with the Australian Standard AS 4282:1997 Control of the Obtrusive Effects of Outdoor Lighting.

48. STREET NUMBER/S

The street number for the property shall be a minimum of 75mm high and shall be positioned 600mm-1500mm above ground level on the site boundary that fronts the street. Should the number be fixed to an awning then it shall be a minimum 150mm high.

End of conditions

Conclusion:

The plain meaning conditions can now fit comfortably on two pages (plus the standard conditions attachment) and the errors associated with cutting and pasting standard conditions is thereby avoided. Both council and the applicant can concentrate on the special conditions and the standard conditions can take care of themselves. It is also possible to have a series of standard conditions that apply to similar types of development.

SCHEDULE A

A. APPROVED DEVELOPMENT

1. The development must be in accordance with the details in the development application and:

1.1 Architectural Plan No. DA00 Rev C, DA01 Rev F, DA11 Rev F, DA12 Rev F, DA13 Rev E, DA20 Rev E, DA21 Rev F and DA22 Rev E, tables and documentation prepared by Applicant's Architect, dated 20/07/07, and received by Council on 23/07/07, except where amended by the following conditions of consent;

1.2 Landscaping details as per Landscape Plan No. LC01B, prepared by Applicant's Landscape Designer, dated 28/02/07, and received by Council on 13/03/07;

1.3 BASIX Certificate No. 125749S dated 07/03/07, and received by Council on 13/03/07;

2. LANDSCAPE AMENDMENT

The landscape plan is to be amended to include two additional local native trees of minimum pot size of 45 litres. Proposed species are to be approved by Council's Tree Management Officer.

2.1 The two 'kentia palms' *Howea forsteriana* included in the landscape plan are to be substituted with 'Cabbage Tree Palms' *Livistona Australia*.

2.2 The 'Bleeding Hearts' *Clerodendrum splendens* included in the landscape plan are to be substituted with *Pandorea pandorana*.

3. USE OF DWELLING

The premises are to be used only as a single unit dwelling house.

4. MONETARY CONTRIBUTION

A contribution shall be paid to council under its section 94A policy in accordance with the standard conditions with the cost being calculated by using the Council Registered Quantity Surveyor's Detailed Cost Report.

5. SECURITY DEPOSIT

The Applicant shall pay a security deposit of \$10,000 in accordance with the standard conditions.

6. ON SITE DETENTION

6.1 All seepage and surface waters and roof waters being collected and disposed of in accordance with Council's Stormwater Policy and the on-site detention system (OSD) referred to in the approved plans in condition 1.1.

6.2 Details prepared by a Hydraulics Engineer are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate.

7. STANDARD CONDITIONS

This consent is also subject to the attached standard conditions of consent.
