



**Land and Environment  
Court**  
of New South Wales

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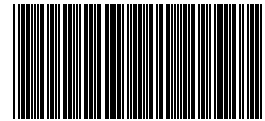
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Your Ref:



D0001RWSAS

13 September 2023

### NOTICE OF ORDERS MADE

Case number      2022/00321227  
Case title        Antonio Todarello v Blue Mountains City Council

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On 13 September 2023 the following orders (and/or directions) were made:

The Court orders that:

- (1) The appeal is upheld.
- (2) Development Application X/431/2022, as amended, which seeks alterations and additions to an existing fruit shop and associated engineering works on Lot 9 Deposited Plan 656879, also known as 731-733 Great Western Highway, Faulconbridge, is determined by the grant of consent, subject to the conditions of consent contained at Annexure A.

For the Registrar

## Annexure A

### DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

**Development Application No:** DA X/431/2022

**Development:** Alterations and additions to existing retail fruit and vegetable shop and existing sale of pots and landscape supplies

**Site:** Lot 9 DP 656879, 731-733 Great Western Highway, Faulconbridge

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

**Date of determination:** 13 September 2023

**Date from which consent takes effect:** Date the consent is registered on the NSW Planning Portal.

#### TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as Lot 9 DP 656879, 731-733 Great Western Highway, Faulconbridge.

The conditions of consent are as follows:

## DEFERRED COMMENCEMENT CONDITIONS OF CONSENT

### PART 1 – Deferred Commencement Matters

This is a “Deferred Commencement” consent that is granted subject to a condition under Section 4.16(3) of the Environmental Planning and Assessment Act 1979 (“EP&A Act”). This “Deferred Commencement” consent is not to operate until the applicant satisfies Blue Mountains City Council (“Council”) as to the matters set out in Schedule A. The period within which the applicant must produce evidence to the Council that is sufficient to enable it to be satisfied as to the matters in Schedule A is **120 days** from the date this “Deferred Commencement” consent is granted.

If the applicant produces evidence to the Council within the period specified above that is sufficient to enable the Council to be satisfied as to the matters set out in Schedule A and the Council notifies the applicant in writing that it is satisfied as to the matters and of the date from which the consent operates, the development consent shall become operative from that date subject to compliance with the conditions set out in Schedule B.

This “Deferred Commencement” consent shall lapse pursuant to section 4.53(6) of the EP&A Act if the applicant does not, within the period specified, produce evidence to the Council that is sufficient to enable the Council to be satisfied as to the matter set out in Schedule A and obtain written notice from the Council stating:

- (i) the Council is satisfied as to the matter set out in Schedule A; and
- (ii) the date from which the consent operates,

### Schedule A

The following matters must be addressed to the satisfaction of the Council’s Manager – Development and Building Services to satisfy these deferred commencement conditions of consent:

## REMOVAL OF UNAUTHORISED HARDSTAND

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### Removal of unauthorised hardstand

- a The hard stand areas that are within the areas identified as *Additional Landscaped Area [Section 34 Application]* and *Additional Landscaped Area [Post Conciliation]* as identified on the *Site Plan* by Forerunners Design, drawing 06/2021-01, issue E and dated 31/5/2023) (approved pursuant to this development consent) must be removed to satisfy this deferred commencement condition.

The removal of the hardstand areas specified above must be undertaken in accordance with the requirements of the remainder of these deferred commencement conditions ((b) – (g)), and evidence must be provided to the Council that demonstrates that the hard stand has been removed and that this removal was undertaken in accordance with deferred commencement conditions (b)-(g) to satisfy this deferred commencement condition of consent.

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**WorkCover**

- b The removal of hardstand shall referred to in condition (a) of these deferred commencement conditions must be supervised by an appropriately qualified and experienced professional for such work.

All activities are to be carried out in compliance all relevant requirements including relevant provisions of:

- *Work Health and Safety Act*, and
- *Work Health and Safety Regulations* and
- Applicable SafeWork NSW Codes of Practice

Details of this supervision shall be kept by the applicant and produced to the Council upon reasonable request.

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**Site management**

- c To safeguard the local amenity, reduce noise nuisance and to prevent environmental pollution during the removal of the unauthorised hardstand:
- Site works (including the removal of material from the property) shall be carried out Monday to Friday between 7am-6pm and on Saturdays between 8am-3pm, excluding public holidays. Alteration to these hours may be possible for safety reasons but only on the agreement of Council.
  - Cutting operations including the washing tools, as well as any vehicle manoeuvring, shall be undertaken entirely on the site, with pollutants contained.
  - No waste can be stored on site but will need to be removed to an approved Waste Disposal Depot authorised to take such waste. Detail of this disposal shall be kept by the applicant and provided to Council upon reasonable request.

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**Erection of signs**

- d During removal of the hardstand, a sign must be erected in a prominent position on the site:
- a) showing the name, address and telephone number of the professional supervising the work, and
  - b) showing the name of the principal contractor (if any) for the work and a telephone number on which that person may be contacted outside working hours, and
  - c) stating that unauthorised entry to the site is prohibited.

Such sign is to be maintained while the work is being carried out, but must be removed when the work has been completed.

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**Stabilisation of exposed ground**

- e Immediately after the removal of the hardstand areas nominated in condition (a) of these deferred commencement conditions of consent, the exposed ground must be stabilised by the placement of geofabric and/or temporarily landscaped to the satisfaction of Council (pending being landscaped in a timely manner in accordance with the amended landscape plan approved in accordance with the conditions of this consent). The requirements of this condition must be completed

		to Council's satisfaction for the deferred commencement conditions to have been addressed.
<b>Removal of material</b>	f	All demolished material and excess spoil from the site must be disposed of to an approved Waste Management Facility. No material is to be burnt on site.
<b>Repair of damage</b>	g	The applicant must repair or reconstruct any damage to Council or Transport for NSW infrastructure caused by the activity resulting from the removal of the hardstand as required by the Council's Supervising Engineer or Transport for NSW. Any repair and reconstruction of the infrastructure nominated in this condition must be completed to satisfy this deferred commencement condition of consent.

## Schedule B

## OPERATIONAL CONDITIONS OF CONSENT

### GENERAL

<b>Confirmation of relevant plans and documentation</b>	1.	To confirm and clarify the terms of consent, the development shall be carried out in accordance with the following plans and accompanying supportive documentation, except as otherwise provided or modified by the conditions of this consent:		
Document	Prepared by:	Drawing No	Issue	Date
Site Plan	Forerunners Design	06/2021-01	E	31/5/2023
Demolition Plan	Forerunners Design	06/2021—03	E	31/5/2023
Proposed Floor Plan	Forerunners Design	06/2021-04	E	31/5/2023
Proposed Roof Plan	Forerunners Design	06/2021-05	E	31/5/2023
Proposed Elevations	Forerunners Design	06/2021-06	E	31/5/2023
Landscape Concept Plan	Forerunners Design	06/2021-01	E	31/5/2023
Slope Stabilization and Soil Amelioration	Forerunners Design	06/2021-02	E	31/5/2023
Cover Sheet	CivilCol Consulting	2021-246-C01	02	20/5/2023
Overall Site Plan	CivilCol Consulting	2021-246-C02	04	24/7/2023
Erosion & Sediment Control Plan	CivilCol Consulting	2021-246-C03	04	24/7/2023

Document	Prepared by:	Drawing No	Issue	Date
Erosion & Sediment Control Detail 1	CivilCol Consulting	2021-246-C04	02	20/5/2023
Erosion & Sediment Control Detail 2	CivilCol Consulting	2021-246-C05	02	20/5/2023
Stormwater Management Plan	CivilCol Consulting	2021-246-C06	04	24/7/2023
Stormwater Management Details 1	CivilCol Consulting	2021-246-C07	04	24/7/2023
Stormwater Management Details 2	CivilCol Consulting	2021-246-C08	02	20/5/2023
Traffic Assessment	Transport and Traffic	23011	E	3/6/2023
Slope Risk Assessment – Revised Stormwater Engineering Design	Greywacke Geotechnics	ANTTO 396-GEO		10/8/2023
Slope Risk Assessment – Revised Stormwater Engineering Design	Greywacke Geotechnics	ANTTO 396-GEO		21/3/2023
Slope Risk Assessment – Proposed Stormwater System	Greywacke Geotechnics	ANTTO 369-GEO		13/3/2020
Pump-Out for On-Site Wastewater Management	Harris Environmental	6103WW	1.0	21/4/2023

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**Lapsing of Consent**

2. Deleted

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**Confirmation of approved development**

3. The approved use the subject of this consent is confirmed as:
- a) Retail Fruit and Vegetable Shop
  - b) Sale of Pots and Landscape supplies

This consent does not approve uses that are not ancillary and subservient to the above uses such as wholesale storage and wholesale distribution activities and any associated on-site truck parking:

The operation of this consent supersedes the approved site plan and landscape plan and conditions 9 [stormwater] and 10 [Landscaping and location of advertising sign] of development consent X/580/2005/A.

The operation of this consent does not supersede any other requirements and conditions provided under development consent X/580/2005/A including requirements and conditions of Transport for NSW [formerly Roads and Maritime Services].

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**Building Code of Australia**

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

<hr/> <b>Construction certificate</b>	<p>5. A construction certificate is required prior to the commencement of any building works. This certificate can be issued either by Council as a certifying authority or by an accredited certifier.</p>
<hr/> <b>Occupation certificate</b>	<p>6. The building must not be used or occupied prior to the issue of any occupation certificate in accordance with sections 6.9 and 6.10 of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
<hr/> <b>Sydney Water Section 73 Certificate</b>  <i>Prior to issue of any occupation certificate</i>	<p>7. A Section 73 Compliance Certificate under the <i>Sydney Water Act 1994</i> must be obtained from Sydney Water Corporation.</p> <p>Make early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.</p> <p>For development involving Major Works an, application must be made through an authorised Water Servicing Coordinator.</p> <p>However for developments that involve no work or Minor Work, an application for a certificate may be lodged with either a Water Servicing Coordinator or on-line at Sydney Water Developer Direct <a href="http://www.sydneywater.com.au/SW/plumbing-building-developing/developing/Sydney-Water-Developer-Direct/index.htm">http://www.sydneywater.com.au/SW/plumbing-building-developing/developing/Sydney-Water-Developer-Direct/index.htm</a>. For help either visit <a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a> <i>Plumbing, building and developing</i> or telephone 13 20 92.</p> <p>The Section 73 Compliance Certificate or letter from Sydney Water that a Section 73 Compliance Certificate is not required must be submitted to the Principal Certifying Authority prior to issue of any occupation certificate.</p>
<hr/> <b>Sydney Water building plan approval</b>  <i>Prior to works commencing</i>	<p>8. A building plan approval must be obtained from Sydney Water Tap in to ensure that the approved development will not impact Sydney Water infrastructure.</p> <p>A copy of the building plan approval receipt from Sydney Water must be submitted to the Principal Certifying Authority prior to works commencing.</p> <p>Please refer to the web site <a href="http://www.sydneywater.com.au">www.sydneywater.com.au</a> - Plumbing, building &amp; developing - Sydney Water Tap in, or telephone 13 20 92.</p>
<hr/> <b>Limit of vegetation removal</b>	<p>9. No trees or other vegetation is to be removed unless such works are permitted by this development consent, including approved plans and consent conditions, or such works comprise weed removal as permitted by DCP 2015 Part C2.3 or prior written approval from Council is obtained.</p>

## PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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**City-wide Local  
Infrastructure Contribution**

10. In accordance with the *Blue Mountains City-wide Local Infrastructure Contributions Plan 2022* adopted 28 June 2022 ("the Contributions Plan"), a contribution of **\$15,000.00** shall be paid to Council.

This amount will be adjusted\* at the time of payment in accordance with Section 3.7 of the Contributions Plan.

The contribution shall be paid prior to the issue of a construction certificate, or commencement of the use of the land, whichever occurs sooner.

The Contributions Plan is available for inspection at Council's offices or on Council's website at [www.bmcc.nsw.gov.au](http://www.bmcc.nsw.gov.au).

\*Using the All Groups Consumer Price Index (Sydney), as published by the Australian Bureau of Statistics. You are advised to check the current amount payable with Council prior to any payment.

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**Fit out of premises**

11. To ensure the premises are constructed so as to be suitable for the safe and hygienic preparation of food, the fitout of the premises is to comply with National Food Standard 3.2.3 *Food Premises and Equipment* and Australian Standard AS4674.2004 *Design, Construction and Fitout of Food Premises*. Fit out to be as set out in the plans approved pursuant to this consent. Details are to be submitted to the Principal Certifying Authority as part of the Construction Certificate documentation.

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**Detailed engineering design  
retaining walls**

12. Prior to the issue of any Construction Certificate, detailed designs of retaining walls (if required), are to be prepared and certified by a practicing structural engineer and submitted to and approved by the Certifying Authority.

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**Internal pavement - design**

13. Prior to the issue of the Construction Certificate, the Principal Certifier shall be satisfied that the internal driveway and parking areas etc have been designed in accordance with Australian Standards AS 2890.1/2004, AS2890.2/2002 and AS 2890.6/2009 and the approved plans.

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**Landscape Plan approval  
with amendments**

14. To minimise the visual dominance of the retail and hardstand areas and ensure that the development contributes to the bushland character of the Blue Mountains, a Detailed Landscape Plan, planting schedule and specifications, based on the Landscape Concept Plan, by Forerunners Designs Issue E dated 31 05 2023, is to be prepared and submitted to Council's Landscape Assessment Officer for approval prior to the commencement of any works and prior to the issue of a Construction Certificate.

The Detailed Landscape Plan, planting schedule and specifications are to address the following additional matters:

- a) Detailed procedures and contingencies in relation to unexpected finds and subsurface conditions, beneath the unauthorised



concrete surface and how they will be addressed once the surface is removed.

- b) Information to address the soil volume once the concrete has been extracted. Include a soil profile that ensures optimum soil volume and vegetation survival.
- c) Within the area identified as 'Northern Downslope Landscape Area' provision for soil amelioration and necessary ground improvement strategies to ensure sufficient soil volumes for planting are provided.
- d) Provision of additional weed control and management measures as necessary to achieve effective weed control before during and after works across the entire site.
- e) The two species provided for the swale will require supplementary planting for optimal function. Include two additional sedges species such as *Carex appressa*, *Juncus usitatus*, *Lepidosperma* species, *Schoenus* species or other similar local native species.
- f) Bio-retention basin vegetation is to be consistent with the condition titled '*Vegetative components of bio-retention systems*'.
- g) The substitution of the *Leptospermum* with *Persoonia* or similar due to *Leptospermum* being highly flammable and unsuited within a bush fire prone area.
- h) Relocate trees from the level spreader location where surface rock is present. Within areas of minimal soil depth trees should be substituted for suitable indigenous groundcover species.
- i) Provide soil stabilisation and soil amelioration details at a suitable scale (increase the font size) so that text is legible on an A3 plan.

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**Vegetative components of  
bio-retention systems**

*Prior to the issue of any  
Construction Certificate*

- 15. Prior to the issue of any Construction Certificate relating to the development, a detailed schedule of the plantings to be implemented within the bio-retention system(s) is to be prepared by a qualified practicing professional with experience in the vegetative design of bio-retention systems.

To ensure plant roots occupy all parts of the media and that optimal year round treatment performance is assured, the final planting schedule is to ensure vegetative components within the bio-retention system(s) include local macrophytes and groundcovers with occasional small shrubs where appropriate that:

- a) are adapted to local climatic conditions,
- b) are adapted to the expected high and variable nutrient and moisture conditions,
- c) are suitable for the bio-retention basin's expected management and maintenance requirements,

	<ul style="list-style-type: none"> <li>d) preferably demonstrate extensive fibrous root systems, spreading rhizomatous or suckering habitat over clumping habit,</li> <li>e) are to be established at a minimum density of at least 8 plants per square metre across the base and side batters of the bio-retention systems, and</li> <li>f) include at least 4 different macrophyte or groundcover species within the basin.</li> </ul> <p><b>Note:</b> For filter surfaces on the base of bio-retention systems include species such as <i>Juncus planifolius</i>, <i>Carex appressa</i>, <i>C. longibrachiata</i>, <i>Gahnia sieberiana</i>, <i>Juncus usitatus</i>, <i>Ficinia nodosa</i>, <i>Lepidosperma</i> species, <i>Schoenus</i> species or other similar local native species. For batter slopes of bio-retention systems include <i>Balioskion fimbriatum</i> or <i>B. tetraphyllum</i>, <i>Baumea rubiginosa</i>, <i>Poa sieberiana</i>, <i>Blechnum cartilagineum</i> or <i>Blechnum nudum</i>, <i>Dianella revoluta</i>, <i>Patersonia</i> species <i>Themeda australis</i> and <i>Libertia paniculata</i> or other similar local native species.</p>
<p><b>Installation of erosion and sediment controls</b></p> <p><i>Prior to commencement of works</i></p>	<p>16. Erosion and sediment controls are to be installed in accordance with the approved Erosion and Sediment Control (ESCP) prior to the commencement of works.</p>
<p><b>Maintenance and decommissioning of sediment and erosion controls</b></p> <p><i>During works</i></p>	<p>17. <b>Maintenance</b> - Erosion and sediment controls are to be continually monitored and maintained in accordance with the approved Erosion and Sediment Control Plan (ESCP) for the duration of the works and until all disturbed areas are stabilised to the satisfaction of the Principal Certifying Authority.</p> <p><b>Decommissioning</b> - All temporary erosion and sediment controls are to be adequately decommissioned and spoil removed to an approved landfill or, if uncontaminated, otherwise stabilised prior to the issue of any Occupation Certificate.</p>
<p><b>Restoration of disturbed and degraded areas</b></p>	<p>18. To prevent sediment leaving the site, all disturbed areas, earthworks and/or batters within the construction zone are to be stabilised and restored immediately it is possible to do so. These areas are to be topsoiled and revegetated in accordance with the approved Landscape Plan. The Council must be satisfied that all disturbed areas are adequately stabilised in accordance with the approved Landscape Plan and to the satisfaction of the Council.</p>

## COMMENCEMENT OF DEMOLITION AND CONSTRUCTION

<p><b>Demolition management</b></p>	<p>19. The work is to be executed by a competent person, with due regard for safe working practices and in accordance with the requirements of the SafeWork NSW and AS 2601 <i>The demolition of structures</i>.</p>
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	<p>At all times during demolition a competent person shall directly supervise work. It is the responsibility of the person to ensure that:</p> <ul style="list-style-type: none"> <li>• The structure to be demolished and all its components shall be maintained in a stable and safe condition at all stages of the demolition work. Temporary bracing, guys, shoring or any combination of these, shall be added for stability where necessary.</li> <li>• Precautions are taken to ensure that the stability of all parts of the structure and the safety of persons on and outside the site are maintained particularly in the event of sudden and severe weather changes. Severe weather changes refer primarily to the localised high winds. In these circumstances loose debris can become airborne, particularly if it is in sheet form.</li> <li>• The site shall be secured at all times against the unauthorised entry of persons or vehicles.</li> <li>• Utility services within the structure not required to be maintained during the demolition work shall be properly disconnected and sealed off before any stripping or demolition commences.</li> </ul>
<b>Demolition of buildings generally</b>	<p>20. The demolition work to be supervised by a competent person with due regard to safe working practices and in accordance with the requirements of SafeWork NSW.</p> <p>Such work is to be carried out in accordance with the <i>Work Health and Safety Act 2011</i> and Regulations and AS 2601 <i>The demolition of structures</i>.</p>
<b>Development involving bonded asbestos material and friable asbestos material</b>	<p>21. Work involving the removal of bonded asbestos removal (of an area of more than 10 square metres) or friable asbestos must be undertaken by a person licensed to undertake such work under clause 458 of the <i>Work Health and Safety Regulation 2017</i>;</p>
<b>Notification to Council and adjoining residents of demolition of buildings</b>	<p>22. The applicant is to notify Council and adjoining residents, in writing, at least ten (10) working days prior to demolition commencing, of their intention to commence demolition works. In the case of adjoining residents, such notification is to be a clearly written note, on at least note pad size paper, giving the date demolition will commence and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side and immediately to the rear of the demolition site.</p>
<b>Disposal of asbestos</b>	<p>23. All asbestos material, including asbestos cement, is to be disposed of to an approved waste management facility licensed to receive asbestos.</p>
<b>Display of signage</b>	<p>24. The developer will display appropriate asbestos/demolition signage prior to and during demolition works.</p>

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**Site management**

25. To safeguard the local amenity and pedestrian safety, reduce noise nuisance and to prevent environmental pollution during the construction period:
- Site and building works (including the delivery of materials to and from the property) shall be carried out Monday to Friday between 7am-6pm, and on Saturdays between 8am-3pm, excluding public holidays. Alteration to these hours may be possible for safety reasons but only on the agreement of Council.
  - Stockpiles of topsoil, sand, aggregate, spoil or other building materials, and temporary structures (such as site sheds and toilets) shall be stored wholly within the subject property and clear of any drainage path or easement, natural watercourse, footpath, kerb or road surface and shall have measures in place to prevent the movement of such material off site. The approval of Council under the Roads Act 1993 is to be obtained prior to the placement of any materials or temporary structures on Council land.
  - Building operations such as brickcutting, washing tools, concreting and bricklaying shall be undertaken on the building block, with pollutants contained on site.
  - Builders waste generated under this consent (including felled trees, tree stumps and other vegetation) must not be burnt or buried on site.
  - A garbage receptacle must be provided on the work site before construction works commence and must be maintained until the building works are completed. The receptacle must have a tight fitting lid or other suitable measure to prevent waste from leaving the site during weather events. All waste (including building waste, food scraps/ waste, papers) must be contained in the garbage receptacle and removed to an approved Waste Disposal Depot. In the case of vegetation, it is to be mulched for re-use on the site, with the exception of environmental and declared noxious weeds.

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**Workers amenities**

26. Before work starts, toilet facilities must be provided for construction personnel on the site. Amenities are to be installed and operated in an environmentally responsible and sanitary manner.

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**Builder details or owner-builder permit**

27. Prior to any building works commencing on the site you must provide to the Principal Certifying Authority:
- a) Written advice as to the principal contractor (name, address and licence number), or
  - b) A copy of the owner-builder permit.

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**Weed control**

28. Systematic and effective control of all invasive species\* is to be undertaken prior to or concurrently with the commencement of works.

Techniques used must be consistent with best practice and low impact bushland regeneration techniques, and in accordance with any specifications noted in any approved BMCC weed management strategies or plans available at:

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<https://www.bmcc.nsw.gov.au/weeds> or as recommended within the Blue Mountains DCP 2015 Part C2.2.

The property owner is to ensure control is undertaken on a regular basis to ensure eradication of mature weeds in all areas, the depletion of soil stored seed, and the successful establishment of the approved plantings /restoration of bushland areas.

\*As identified under the provisions of the *Biosecurity Act 2015* and the Blue Mountains DCP 2015 Part C2.3.

## FOOD FIT OUT OF PREMISES

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### Floors, walls and ceilings

29. Floors, walls and ceilings shall comply with the requirements of Australian Standard 4674.2004 Design, Construction and Fit-Out of food premises and the Food Safety Standard 3.2.3. In particular parts 3.1, 3.2 and table 3.3 of Australian Standard 4674.2004 (which indicates suitable floor, walls and ceiling finishes).

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### Adequate sinks

30. To prevent cross contamination, the premise shall be equipped with the following as a minimum requirement as set out in Section 4 of Australian Standard 4674-2004:
- a) Washing sinks:
    - Single bowl sink and dish washer of adequate size for cleaning and sanitising of all equipment.
    - Or double bowl sink
    - Or double bowl sink and dish washer where some equipment is too big to be wash in the dish washer.
    - Or triple bowl sink where each bowl can be designated for washing, rinsing and sanitising
  - b) If food business requires immersion of food in water – a designated food preparation sink is required away from washing area.
  - c) Cleaners sink to be installed away from open food production (if no floor waste drain provided in food prep area).
  - d) Sink/s should be of adequately sized, large enough for the correct cleaning and sanitising of all utensil/s and equipment.

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### Support of appliances

31. So that equipment is easily moved for cleaning purposes, refrigerators, frozen food cabinets, cooking appliances, equipment, fittings, cupboards/cabinets etc., are to be supported on either:
- Wheels or castors capable of being easily moved when fully loaded.
  - Legs that provide at least 150mm clear space between the floor and the underside of the fitting.

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**Lighting**

32. Lighting to comply with AS 4674-2004 part 2.6, which includes all lights in open food areas to have either:
- a) Shatter proof tubes,
  - b) Light covers or
  - c) Sleeves over tubes and
  - d) Be designed to prevent harbouring of dust, dirt, other matter.

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**Garbage storage area**

33. A designated area is to be provided for garbage and recyclable material in accordance with AS4674-2004.
- The construction requirements of the garbage area under AS4674 require area paved with an impervious material with a tap and drained to sewer. (see section 2.4 Garbage and Recyclable Materials AS4674-2004).
- Details including tap and drain to the reticulated sewer are to be submitted to the Principal Certifying Authority as part of the Construction Certificate Documentation. A copy of which is to be provided to the Environmental Health Officer at the final inspection for food safety.

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**Hand Washing**

34. Designated hand wash basin/s is required for the washing of hands, this must comply with AS4674-2004 part 4.4. The washbasin shall be:
- e) Of an adequate size to wash hands, arms and face.
  - f) Permanently fixed at bench height
  - g) In locations that will not be obstructed
  - h) There shall be a permanent supply of warm running potable water delivered through a single outlet.
  - i) Basin to be drained to sewer
  - j) Taps to the washbasin must be hands free or elbow operated.
  - k) Spout to extend out over the basin adequately to ensure easy of hand washing.

Location of hand wash basin to be accessible and no further than 5 metres from any place where food handlers are handling open food. There may need to be more than one hand wash basin.

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**Staff toilet**

35. Staff toilet shall be provided with a hand wash basin with the same requirements as AS4674-2004.
- Mechanical exhaust system to be installed in staff toilet which operates when the sanitary compartment is in use and for at least 30 seconds after the toilet is vacated.
- Doors to toilet to have self closing devices added to keep doors closed.

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**Grease arrestors**

36. Grease arrestors shall not be located in areas where food, equipment or packaging materials are handled or stored. Access to grease arrestors for emptying shall not be through areas where open food is handled or stored or where food contact equipment and packaging materials are handled or stored.

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**Proofing against vermin**

37. To prevent the harbourage of vermin,
- l) cavities, false bottoms and similar hollow spaces capable of providing access to vermin shall not be formed in the construction of the premises, nor in the installation of fixtures, fittings and equipment unless adequate access to allow proper cleaning is provided.
  - m) the cavity bounded by the bottom of the cupboard, the wall, floor and kickboard is to be filled with an expanding foam so as to fill the space.

## ON-SITE SEWER MANAGEMENT SYSTEM

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**Septic tank and effluent pump out**

38. The pump out septic system is to be designed, located and installed in accordance with the recommendations in the Wastewater report prepared by Harris Environmental Consulting, report number: 6103WW, dated 21 April 2023, but with the following specific requirements and modifications:
- a) The capacity of the septic tank must be 4000 litres.
  - b) The collection well shall have a minimum holding capacity of 15,000 litres, and is to be fitted with a high water level alarm.
  - c) A minimum 1m<sup>3</sup> of concrete will be introduced around the outside of the holding well to secure its position in the ground.
  - d) The suction line must be 50mm diameter, Class 12 pressure pipe with airtight glued joints.
  - e) The last 1.5 metres of the suction line and upstand must be a galvanised iron pipe terminating with a 50mm gate valve and "Camlok" fitting.
  - f) The upstand is to be set in concrete at the base to stabilise all joints near to the service outlet.
  - g) The tanker connection point / service outlet shall be located as per 'Wastewater management plan details sheet 1' in the Wastewater report.

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**Tanker access**

39. The tanker connection point / outlet shall have clear access for the pump-out tanker and access to the service fitting must be maintained at all times.

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**Inspections – on-site sewer management system**

40. To ensure the maintenance of minimum health standards and the protection of the environment, inspections are required at the following stages throughout the construction period.

These stages are:

- a) On completion of the treatment system / tanks before any backfilling

	<p>Service points on the treatment system / tanks and drainage lines are to be left open for inspection, the day before the inspection, the tanks must be filled with water, to ensure satisfactory jointing, drainage lines must also be water tested prior to Council's inspection. The licensed plumber/irrigator is to be present at the inspection.</p> <p>At each inspection, erosion and sediment control measures and site management will be inspected.</p>
<b>Standards – Sewer and plumbing work</b>	<p>41. All house sewer and plumbing work is to be carried out in accordance with the requirements of the AS 3500.5 <i>Plumbing and drainage - Housing installations</i>, the <i>Local Government Act 1993</i> and the <i>Local Government (General) Regulation 2021</i>.</p> <p>All wastes from the building are to be treated in the septic tank unless otherwise approved by Council.</p>
<b>Location of tank</b>	<p>42. The location of the tank must be in accordance with the stamped approved plan.</p>
<b>Installation certificate / completion of works (on-site sewage management system)</b>	<p>43. The on-site sewage management system must be installed by a contractor(s) licensed by the NSW Fair Trading. The licence holder can be a plumber or an irrigation contractor (or both).</p> <p>The installation of the on-site sewage management system must be certified by the licensed plumber/contractor that it has been installed in accordance with the description in the System design. All installation certificates must be submitted to Council prior to issue of any occupation certificate.</p> <p>Reference is made to Water NSW <i>Designing and Installing On-site Wastewater System (Recommended Practice)</i> – Appendix 4.</p>

## PRIOR TO OCCUPATION CERTIFICATE

<b>Line marking and signage</b>	<p>44. Prior to any Occupation Certificate, the paved area is to be line marked in accordance with the approved plan. The line marking is to show parking for all vehicles associated with the operation of the business. The electricity easement is to be marked so that combustible goods (fertilisers and mulch) can be safely stored outside the easement and signage provided accordingly.</p>
<b>Repair of damage</b>	<p>45. The applicant shall repair or reconstruct any damage to Council or Transport for NSW infrastructure caused by construction activity relating to the development as required by the Council's Supervising Engineer or Transport for NSW prior to release of any Occupation Certificate</p>



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**Stormwater Management  
Plan (SMP) –  
Implementation,  
Certification and  
Compliance**

46. **Implementation**

All components of the stormwater management system are to be installed in accordance with the approved plans prior to the issue of an Occupation Certificate.

**Certification**

The completed stormwater management system is to be certified by the design engineer or other a suitably qualified person to have been constructed in accordance with the approved plans, supporting information, and development consent conditions, and satisfactorily meet the required stormwater performance outcomes. The certification shall be provided to the certifying authority prior to the commencement of landscaping works.

**Compliance**

Following installation and certification, the stormwater management system must be inspected by the Certifying Authority, who must be satisfied that all components of the stormwater system have been satisfactorily completed prior to the commencement of landscaping works use or the issue of any occupation certificate (as applicable). The Proprietors of the property must complete any works directed by the certifying authority in order to satisfactorily achieve the requirements of these development consent conditions

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**Stormwater System  
Operation and Maintenance  
Manual**

47. Prior to the issue of an Occupation Certificate, a Stormwater System Operation and Maintenance Manual for the approved stormwater management system is to be prepared by a suitably qualified professional and approved by the Certifying Authority.

The purpose of the manual is to ensure that:

- the ongoing structural integrity and effective operation of the on-site drainage, stormwater quality and quantity treatment, on-site detention and other stormwater management structures are maintained,
- the requirements of these development consent conditions are met, and
- the post development water quality and discharge conditions meet the required performance outcomes for the life of the development.

To ensure the stormwater devices and the system remains in good working order for the life of the development the manual shall clearly specify:

- a. monitoring and maintenance requirements for each device, and
- b. auditing and performance assessment both for water quality, hydraulic performance and structural integrity, and
- c. schedule for inspections, audits and remedial maintenance tasks to meet the performance objectives (e.g. after specified storm events and no less than annually, timeframe for bio-filtration media replacement and porous paving vacuuming/high pressure hosing/replacement), and
- d. plant establishment methods, monitoring, maintenance and

replacement to maintain a healthy coverage of all vegetative components of water quality, conveyance and disposal devices

- e. annual written certification to be sent to Council,
- f. nominated regular period for review of the manual
- g. documented maintenance taken

The Stormwater System Operation and Maintenance Manual is to be kept up to date and implemented at all times. A copy shall be held by the Proprietors and their successor of the site and shall be available for inspection by Council officers upon request.

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**Section 88E - Positive covenant –Stormwater Management**

48. To ensure the stormwater conveyance and quality treatment (i.e. the stormwater management system) is satisfactorily implemented and maintained, a covenant under Section 88E of the Conveyancing Act, 1919 shall be prepared and registered over the subject land prior to the issue of an Occupation Certificate..

The terms of the 88E Instrument with positive covenant shall include, but not be limited to, the following:

- a. The Proprietors of the property and their successors must implement the approved Stormwater System Operation and Maintenance Manual.
- b. The Proprietor shall agree to have the stormwater management system inspected and certified annually by suitably qualified persons with demonstrated experience in water sensitive urban design.
- c. If the Proprietors of the properties or their successors do not comply with their obligations under this condition, the Council shall have the right to enter upon the land referred to above at all reasonable times to inspect, construct, install, clean, repair and maintain in good working order all components which comprise the stormwater management system or which convey stormwater from the said land and recover the costs of any such works from the Proprietor.
- d. The registered Proprietor shall indemnify the Council and any adjoining landowners against damage to their land arising from the failure of any component of the stormwater management system or failure to clean, maintain and repair the stormwater management system.

The applicant shall bear all costs associated in the preparation of the subject 88E Instrument. The wording of the Instrument shall be submitted to and approved by Council prior to lodgement at NSW Land and Property Information. Proof of registration with NSW Land and Property Information shall be submitted to the certifying authority prior to the issue of an Occupation Certificate.

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**Detailed engineering design of works within the site**

49. Any retaining walls are to be certified on competition by a practicing structural engineer. A copy of the certification is to be submitted and approved by the Principal Certifying Authority (as applicable).

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**Works as executed plans**

50. Prior to the issue of an Occupation Certificate a Works As Executed (WAE) plan of the site is to be prepared by a registered surveyor, and submitted to the certifying authority for approval This is to confirm the extent of the hardstand, landscape, servicing and parking areas are in accordance with the approved plan.

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**Internal pavement - construction**

51. Prior to the issue of the Occupation Certificate, the Principal Certifier shall be satisfied that the internal driveway and parking areas have been constructed and line marked in accordance with Australian Standards AS 2890.1/2004, AS2890.2/2002 and AS 2890.6/2009 and the approved Construction Certificate plans.

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**Landscape implementation**

52. Landscaping is to be included as an integral component of the development to enhance the amenity of the built environment and ensure that the landscape character of the Blue Mountains is protected. To achieve this, landscape works are to be undertaken in accordance with the approved Detailed Landscape Plan inclusive of any amendments by Council, and must demonstrate the following.

At establishment the landscape planting must:

- a) demonstrate integration of retained trees/vegetation within an enhanced landscape setting,
- b) provide and adequately restore tree canopy by including, a minimum number 45 trees comprising *Eucalyptus* and *Corymbia* species capable of achieving a minimum mature height of 6-12 metres
- c) contain the specified plantings which are appropriately advanced, vigorous, structurally sound and correctly installed
- d) be located within appropriately dimensioned and mulched garden beds generally in accordance with the approved landscape plans,

At maturity, the completed landscape planting must achieve:

- e) a prominent and complex garden setting commensurate with the local character, and
- f) subtle screening of the development from roadway areas/public areas/the main transport corridor whilst maintaining an active street frontage, and
- g) appropriate screening of the development from any adjoining residential properties, and
- h) a contribution to the visual character of the locality through the inclusion of dominant landscape elements of a scale appropriate to the development type and style.

Landscaped areas are to be supported by the following requirements;

- i) an appropriately sized and fully installed automatic irrigation system
- j) wheel stops or other means by which vehicular damage to vegetation within garden beds will be prevented
- k) Appropriate tree guards, fencing and other schemes to ensure protection from accidental damage from pedestrian movement.

- l) Proprietary root barriers installed in areas where the root system of adjacent trees may at maturity, compromise the functional integrity of any stormwater management feature or component.

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**Landscaping Certification**

53. Prior to the issue of any Occupation Certificate, the Principal Certifier (PC) is to be provided with / obtain, a written certification statement from a qualified landscaping practitioner or Blue Mountains Council Environmental Officer <sup>A</sup>, and be satisfied, that all landscaping and vegetation management works have been implemented in accordance with the following listed consent conditions and approved plans.

- Landscape Implementation
- Limit of vegetation removal
- Weed control
- Rain garden
- Restoration of disturbed and degraded areas
- Decommissioning of sediment and erosion controls

The person having the benefit of the consent must complete any works directed by the PC or Council in order to satisfactorily achieve these requirements prior to the issue of any Occupation Certificate.

*<sup>A</sup> certification inspections by Council officers are to be arranged with at least 14 days notice and an additional fee will be incurred.*

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**Approval to Operate – On-Site Sewer Management System**

54. Owners must obtain an approval to operate the on-site sewage management system from Council prior to issue of any occupation certificate. This approval can only be issued after Council is satisfied the installation has been completed in accordance with the approved system design.

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**Final inspection – food fit out**

55. Council must be contacted at least 48 hours prior to the opening of the premises to arrange for a final inspection by Council's Environmental Health Officer. The Principal Certifying Authority must ensure the final inspection by the Environmental Health Officer pass all food safety requirements above prior to occupation or use of the premises.

## COMPLETION AND ONGOING USE

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**Storage of goods and materials**

56. At all times, the marked vehicle parking and standing spaces, truck unloading area and driveway, as shown on the approved plan, are to be available for parking and vehicle manoeuvring. No goods or materials are to be stored in marked parking spaces or on the driveway. Goods and materials are only to be stored in their designated areas, as shown on the approved plan.

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**Maintenance – On-Site  
Sewer Management System**

57. The on-site sewage management system is to be maintained according to Section 5 of the Office of Local Government's guidelines *On-site Sewage Management for Single Households (1998)* and AS 1547 *On-site domestic wastewater management*.

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**Sewer Connection**

58. Should sewer become available to the property the approval will cease to operate and connection to sewer will be required.

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**Landscape Maintenance**

59. Following practical completion of landscape works, landscape maintenance is to be undertaken for the life of the development at sufficient intervals to promote successful establishment and growth of all new plantings and maintain all landscaped areas in optimal condition. Trees or other plants that die or are removed are to be replaced with the same or similar species in an equivalent stage of growth.

Maintenance is to include pruning, fertilising, weeding, re-mulching, watering and irrigation, pest/ disease control, rubbish removal, leaf litter management, drain clearing, monitoring and replacement of stakes, ties and other tree protection devices and tree maintenance.