



Issued: 27 June 2022 1:04 PM

## JUDGMENT/ORDER

### COURT DETAILS

|             |                                   |
|-------------|-----------------------------------|
| Court       | Land and Environment Court of NSW |
| Division    | Class 1                           |
| Registry    | Land and Environment Court Sydney |
| Case number | 2022/00035717                     |

### TITLE OF PROCEEDINGS

|                  |                                              |
|------------------|----------------------------------------------|
| First Applicant  | BAYUS PROJECTS PTY LTD<br>ACN 647907426      |
| First Respondent | WOLLONDILLY SHIRE COUNCIL<br>ABN 93723245808 |

### DATE OF JUDGMENT/ORDER

|                    |              |
|--------------------|--------------|
| Date made or given | 20 June 2022 |
| Date entered       | 20 June 2022 |

### TERMS OF JUDGMENT/ORDER

The orders of the Court are:

(1) the Court, exercising under s 39(2) of the Land and Environment Act 1979 the function of the Wollondilly Shire Council as the relevant consent authority under cl 55(1) of the Environmental Planning and Assessment Regulation 2000, agrees to the Applicant amending Development Application DA/2021/1021/1 in accordance with the following amended plans and documents, and grants leave to the Applicant to rely on these plans in the proceedings:

(a) Architectural Plans prepared by AJ Design and Draft, Issue F dated 26 April 2022:

- (i) Drawing No. 01 – Site Plan/Analysis;
- (ii) Drawing No. 02 – Floor Plan;
- (iii) Drawing No. 03 – Elevations and Section A-A; and
- (iv) Drawing No. 04 – Draft Subdivision Plan.

(b) Revised Stormwater Management Plans prepared by Amity Engineers dated 2 May 2022;

(c) Amended BASIX Certificate No. 1040076M\_04 prepared by Greenworld Architectural Drafting dated 2 May 2022;

(2) the appeal is upheld;

(3) the Applicant's development application DA/2021/1021/1 for staged development of a Torrens title subdivision into two lots and construction of a single storey dwelling on each of the new lots in respect of the property at 78 Taylors Road, Silverdale, comprising Lot 4 in DP1247750, is determined by the grant of consent, subject to the conditions of consent at Annexure 'A'.

## SEAL AND SIGNATURE



Signature S. Froh  
Capacity Registrar  
Date 27 June 2022

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

## FURTHER DETAILS ABOUT Applicant(s)

First Applicant  
Name BAYUS PROJECTS PTY LTD  
ACN 647907426  
Address Level 3  
17-21 Hunter Street  
PARRAMATTA NSW 2150  
Telephone  
Fax  
E-mail  
Client reference

### Legal representative

Name Howard Robilliard  
Practicing certificate number 9144  
Address Level 3  
17 - 21 Hunter Street  
PARRAMATTA NSW 2150  
DX address  
Telephone  
Fax  
Email howard@finns.com.au  
Electronic service address howard@finns.com.au

## FURTHER DETAILS ABOUT Respondent(s)

### First Respondent

Name WOLLONDILLY SHIRE COUNCIL  
ABN 93723245808  
Address 62 - 64 Menangle Street  
PICTON NSW 2571

## ATTACHMENTS TO ORDERS

(35717.22 Chilcott C Annexure A.pdf)

[attach.]

## Annexure A

### DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

**Development Application No:** DA/2021/1021/1

**Development:** Staged development, Torrens title 2 lot subdivision  
& construction of a single storey dwelling on each  
lot.

**Site:** 78 Taylors Road, Silverdale

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

**Date of determination:** 20 June 2022

**Date from which consent takes effect:** Date of determination.

#### 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 [insert details].

The conditions of consent are as follows:

Pursuant to Section 4.18 of the Act, notice is hereby given that the above application has been determined by granting consent, subject to the conditions attached.

Notes:

- (1) Except where a condition specifies a limit to the duration of the consent, this approval will expire if the development is not commenced within five (5) years of the determination date appearing above.
- (2) Development Consent does not lapse if the approved use has actually commenced or the proposed work is physically commenced before the lapse date.
- (3) Where construction work is proposed, the granting of development consent is the first step in the process. Before construction work may commence, a Construction Certificate must be obtained from Council or an accredited certifier.
- (4) Should you feel aggrieved by Council's decision in this matter, or object to the conditions imposed, you are entitled to
  - (a) lodge, in accordance with Section 8.7 of the Act, an appeal with the Land and Environment Court of NSW within twelve (12) months of the date appearing above. Forms for such are obtainable from the Local Court at your request.
  - (b) request a Council review of the determination under Section 8.3 of the Act.
- (5) This application has not been considered by the Independent Hearing Commission.

Should you require further information regarding the above matter, please contact Natalie Knapp, Senior Development Assessment Planner on phone (02) 4677 1100 or email [council@wollondilly.nsw.gov.au](mailto:council@wollondilly.nsw.gov.au).

Yours faithfully

**These conditions are imposed to ensure that the development is carried out in accordance with statutory requirements, the conditions of consent and the approved plans to Council's satisfaction.**

**These conditions apply to all stages**

- (1) Development Consent is granted for Staged development, Torrens title 2 lot subdivision & construction of a single storey dwelling on each lot at Lot: 4 DP: 1247750, No. 78 Taylors Road SILVERDALE.
- (2) Development shall take place in accordance with the submitted plans listed below and submitted in respect of Development Application No. DA/2021/1021/1, except where varied by the following conditions:

| Plan                     | Drawn               | Drawing No & Issue                      | Date     |
|--------------------------|---------------------|-----------------------------------------|----------|
| Site Plan                | AJ Design and Draft | DA 01, Issue F                          | 26/04/22 |
| Floor Plan               | AJ Design and Draft | DA 02, Issue F                          | 26/04/22 |
| Elevations & Section A-A | AJ Design and Draft | DA 03, Issue F                          | 26/04/22 |
| Draft Subdivision Plan   | AJ Design and Draft | DA 04, Issue F                          | 26/04/22 |
| Landscape Plan           | Vision Dynamics     | 18224-Lot 4 DA<br>1<br>Rev B as updated | 10/09/21 |

- (3) Development shall take place in accordance with the recommendations of:
  - *Bushfire Assessment Report, prepared by Bushfire Consulting Services Pty Ltd, Version 3 dated 9/04/2021, reference no: 20/0908.*
  - *Arboricultural Impact Assessment & Tree Protection Plan, prepared by The Ents Tree Consultancy and dated 16 October 2021.*
  - *Aircraft Noise Assessment prepared by Acoustic Consulting engineers, dated 30 August 2021, reference no: 211253-01L-DD.*
- (4) The development shall be undertaken in stages as follows:
 

Stage 1: Two (2) Lot Subdivision to create Lot 1 and 2;

Stage 2: Construction of a single story dwelling on each created lot. The Construction Certificate for the dwelling houses cannot be issued until such time as the Subdivision Certificate has been registered with the NSW Land Registry Service.

In this regard the development must be undertaken in stage order. Concurrent development of both stages is not permitted.
- (5) Works shall not commence on the site, including the placement of temporary buildings, site excavation, filling, removal of trees or other site preparation works

(with the exception of site survey work), prior to the issue of a Construction Certificate by Council or a nominated Accredited Certifier.

- (6) All building work must be carried out in accordance with the provisions of the Building Code of Australia. This condition does not apply to the extent to which an exemption is in force under Clause 187 or 188 of the Environmental Planning & Assessment Regulations, 2000, subject to the terms of any condition or requirement referred to in Clause 187(6) or 188(4).
- (7) Where any work associated with this consent has the potential to disturb neighbours through the generation of noise, dust, odour, vibration or through deliveries to the site the person with control over the works shall advise the occupants of all adjoining and potentially affected properties of the timing and duration of such works. The land owner has the ultimate responsibility for ensuring that anybody undertaking works under this development consent on their behalf is aware of this requirement and completes the task required by this condition.

## **2. BUSH FIRE PROTECTION**

**These conditions have been imposed to ensure that the development is sufficiently protected from the risk of bush fire in accordance with the Guideline “Planning for Bush Fire Protection, 2019” as published by the NSW Rural Fire Service and Planning NSW.**

- (1) Bushfire hazard shall be managed in accordance with the recommendations of the Bushfire Assessment Report prepared by Bushfire Consulting Services Pty Ltd, Version 3, dated 9/4/2021, prepared by Catherine Corrie, reference 20/0908 and submitted with the Development Application.
- (2) The development shall be constructed and used so that is consistent with the guidelines set out in the NSW Rural Fire Service’s publication “Planning for Bushfire Protection 2019”.
- (3) Prior to the issue of any construction certificate, an updated bushfire report referring to the Issue F architectural plans must be forwarded to Council or the nominated Accredited Certifier illustrating compliance with the relevant provisions of the “Planning for Bushfire Protection 2019”.

## **3. BUILDING DESIGN**

**These conditions have been imposed to ensure that the appearance /construction of building works complies with the aims and objectives of Council’s relevant Development Control Plans, Policies and relevant Statutory Regulations.**

### **These conditions apply to stage 2**

- (1) All materials and colours to be used in the external construction of the proposed building shall be consistent throughout the total development and/or match those of the existing development.
- (2) The design details of the proposed building façade, including all external finishes, glazing and colours, must be in accordance with the approved materials schedule

and sample board prepared by AJ Design & Draft submitted with the development application.

- (3) Any above ground water storage tanks shall be coloured or painted in earthy colours to blend with the natural environment or building immediately adjoining the water tank to reduce their visual impact.

#### **4. BASIX CERTIFICATES**

**These conditions have been imposed to ensure that the BASIX affected development fulfils the commitments listed in each relevant BASIX Certificate issued for the development.**

##### **These conditions apply to stage 2**

- (1) All construction works, including any insulation requirements or other specific requirements shall comply with the relevant BASIX Certificate No 1040076M\_04 prior to the issue of any Occupation Certificate.

#### **5. CONSTRUCTION GENERAL**

**These conditions have been imposed to ensure that all construction work is undertaken to an approved standard and related approvals.**

##### **These conditions apply to all stages**

- (1) Prior to the issue of any construction certificate, sufficient information must be forwarded to Council or the nominated Accredited Certifier illustrating compliance with the relevant provisions of the Building Code of Australia. Where Council is to be the nominated Accredited Certifier Council's Building Services Section may be contacted on 02 4677 1100 if further clarification is required.
- (2) All construction and building work shall be restricted to between 7:00am and 6:00pm Mondays to Fridays (inclusive), 8.00am and 1.00pm Saturdays and prohibited on Sundays and Public Holidays unless written approval to vary the hours of work is granted by Council.
- (3) Excavated area/s adjacent to the building shall be retained and drained to prevent the subsidence of the excavation and/or entry of surface water to the building. Where the retaining wall exceeds 600mm in height, plans and specifications of the retaining wall shall be submitted to Council or a nominated Accredited Certifier and approved before the issue of the Construction Certificate. Where the height exceeds 1m in height, a certificate prepared by a suitably qualified Structural Engineer shall be submitted with the plans and specifications.
- (4) Any damage to the Council footway, road or other land shall be restored in accordance with Council's specifications prior to the issue of any Occupation Certificate for the development.
- (5) Portable Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out,

at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. These facilities are to be provided prior to the commencement of any works.

- (6) Dust shall be controlled so that it will not leave the construction site.
- (7) A garbage receptacle must be provided at the work site before works begin and must be maintained until the works are completed. This receptacle must have a tight-fitting lid and be suitable for the reception of food scraps, papers, etc.
- (8) A demolition/construction waste storage area (bins or bays) must be provided. This area shall separate demolition/construction waste into categories such as hard waste (e.g. bricks, concrete, tiles), soft waste (e.g. timber, gyprock, metal, glass) and light waste (e.g. paper, plastic, pods). The light waste storage area must be enclosed so as to prevent the material from escaping the enclosure.
- (9) A boundary fence along the subdivision line (partly above the proposed retaining wall) with the top of fence at RL151.70, being 1.8m above the bottom of the retaining wall.
- (10) Ensure that the extent of retaining walls does not exceed 1m.

## **6. ENGINEERING & CONSTRUCTION SPECIFICATIONS**

**These conditions have been imposed to ensure that developments within the Shire are of a standard which is both safe and acceptable to Council and members of the public.**

### **These conditions apply to all stages**

- (1) All works are to be designed and carried out in accordance with Wollondilly Shire Council's adopted Design Code and Construction Specifications.
- (2) The plans for the access, stormwater drainage to be submitted and approved by the Nominated Principal certifying authority with building Construction Certificate.
- (3) A "soil and water management plan" (SWMP) that outlines the measures that will be taken to limit and contain sediment laden runoff during construction shall be submitted to Council or the Nominated Accredited Certifier. The measures shall be in accordance with Council's Construction Specifications and the department of Housing's "blue book". The plan is to be approved by council or the Nominated Accredited Certifier with the engineering plans.
- (4) The habitable floor level requirement shall be a minimum height of 150.0m AHD.
- (5) A certificate from a registered Surveyor shall be supplied to the Principal Certifying Authority prior to pouring the floor slab (or placing the flooring), verifying compliance with the minimum floor level specified.
- (6) Engineer's Certification shall be provided for all civil works carried out within the private property prior to issue of an Occupation certificate.

## **7. DRAINAGE/STORMWATER**



**These conditions have been imposed to ensure drainage/stormwater is constructed to an approved standard.**

**These conditions apply to all stages**

- (1) Stormwater runoff from all impervious surfaces on the property shall be collected and conveyed to a point suitable for integration with Council's stormwater drainage system. A piped drainage system shall be provided to convey runoff from storms up to the 10% AEP. Defined overland flow paths shall be provided to safely convey runoff from storm events up to the 1% AEP.
- (2) The applicant shall provide stormwater drainage generally as shown on the concept stormwater management plans by Amity Engineers ref no210536 Rev B dated 2 May 2022. Details of this shall be approved with building Construction Certificate by the Nominated Accredited Certifier.
- (3) The person having the benefit of this consent shall, at no cost to Council, carry out any necessary amplification or upgrading of downstream drainage.
- (4) Prior to issue of Subdivision Certificate, submission of a Section 88B instrument, in accordance with the Conveyancing Act 1919, shall be submitted to create an Easement to Drain Water
  - a. a minimum 1.5 wide over lot 1 and benefiting lot 2 covering all inter-allotment drainage servicing lot 2,
  - b. variable width over lot 1 and benefiting lot 2 covering the watercourse to Taylors Road.
- (5) Prior to issue of Subdivision Certificate, submission of a Section 88B instrument, in accordance with the Conveyancing Act 1919, shall be submitted that creates a Positive Covenant over lots 1 and 2 requiring the ongoing maintenance and repair of the 5000 litre rainwater tanks. Terms of restriction shall generally follow the wording as outlined in the Wollondilly Shire Council Standard Wording for Easements, Restrictions and Positive Covenants.

**8. CAR PARKING & ACCESS**

- (1) **To ensure that adequate provision is made for off street parking, appropriate to the volume and turnover of traffic generated by the development.**
- (2) **To ensure that adequate manoeuvring space is provided for parking areas, loading bays and entry to facilities.**

**These conditions apply to all stages**

- (1) The existing concrete access driveway is required to extend to the proposed garages. Details of this shall be shown and approved with building Construction Certificate by the Nominated Accredited Certifier.

- (2) All carparking spaces (garages, carports etc) must make provision for vehicle turning areas adjacent to each space to permit a vehicle to manoeuvre and turn such that it can enter and exit the development in a forward direction.
- (3) Prior to issue of Subdivision Certificate, submission of a Section 88B instrument, in accordance with the Conveyancing Act 1919, shall be submitted to create a minimum 5m wide Right of Carriageway over lot 1 and benefiting lot 2. The terms of carriageway shall include requirements for an equal share between lots 1 and 2 for maintenance costs for the concrete shared driveway.
- (4) Prior to issue of Subdivision Certificate, submission of a Section 88B instrument, in accordance with the Conveyancing Act 1919, shall be submitted to create a minimum 3m wide Right of Carriageway over lot 2 and benefiting lot 1 covering the extend of vehicle manoeuvring areas as required by this consent.
- (5) Prior to issue of Subdivision Certificate, submission of a Section 88B instrument, in accordance with the Conveyancing Act 1919, shall be submitted that creates a Restriction on the Use of Land The registered proprietor(s) shall not obstruct, make or permit any alterations to any vehicle turning area(s) that are required to allow vehicles to enter and exit the burdened lot(s) in a forward direction.

## 9. EROSION AND SEDIMENT CONTROL

**These conditions have been imposed to minimise the impact of the construction of the building(s) on the environment and on adjoining properties:**

### **These conditions apply to all stages**

- (1) All disturbed areas are to be stabilised by turfing, mulching, paving or otherwise suitably stabilised within 30 days of completion.
- (2) Vehicle access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site has been affected by wet weather.
- (3) Erosion and sediment control devices are to be installed prior to any construction activity on the site. These devices are to be maintained for the full period of construction and beyond this period where necessary.
- (4) Topsoil stripped from the construction site is to be stockpiled and protected from erosion until re-used during landscaping.
- (5) The installation of the erosion and sediment control devices identified on the Soil and Water Management Plan shall be completed prior to any construction taking place on the site. These devices are to be maintained so as to prevent the discharge of silt into adjoining bays, rivers, creeks, streams, gutters or drains.
- (6) Stockpiles of construction and landscaping materials, and site debris are to be located clear of drainage lines and in such position that they are within the erosion containment boundary or are equivalently protected from erosion and do not encroach upon any footpath, natural strip or roadway.

## 10. INSPECTIONS

**These conditions have been imposed to ensure that construction works are undertaken to an approved standard.**

### **These conditions apply to all stages**

- (1) If the Principal Certifier notifies the site manager or other contractor that a work or works are unsatisfactory for any reason all works on the site shall cease until the matter is resolved to the satisfaction of the PCA.

## 11. SERVICES

**These conditions have been imposed to ensure that an adequate level of services and infrastructure are provided for this development.**

### **These conditions apply to stage 1**

- (1) Electricity supply is to be made available to all proposed lots in accordance with the requirements of Endeavour Energy. In this regard, written confirmation from Endeavour Energy that suitable arrangements have been made shall be submitted to the Principal Certifying Authority prior to the release of the Subdivision Certificate.
- (2) Prior to the issue of the Subdivision in connection with a development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:
  - (a) The installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose; and
  - (b) The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier. (Note real estate development project has the meanings given in section 372Q of the Telecommunications Act).
- (3) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Co-ordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the issue of any Subdivision Certificate for the development.

- (4) Letter boxes shall be provided to each dwelling to the satisfaction of Australia Post.

## **12. WASTE MANAGEMENT**

**These conditions have been imposed to enquire that wastes are correctly stored, disposed of and controlled at all times to prevent accidents and to maintain clean and tidy premises.**

### **These conditions apply to all stages**

- (1) Disposal of construction and building waste material shall be undertaken in accordance with the Waste Management Plan submitted with the Development Application.
- (2) Each dwelling shall be provided with an area to be used to store Council's standard garbage and recycling containers with such area not visible from the street and easily accessible to dwelling occupiers.

## **13. OCCUPATION & USE**

**These conditions have been imposed to ensure the development and associated activities/operation are acceptable in terms of the amenity of the neighbourhood and the public interest whilst maintaining its functional operation.**

### **These conditions apply to stage 2**

- (1) The premises shall be maintained in a clean and tidy state at all times.
- (2) The footpaths shall be kept clear of signs, fixtures and goods at all times.
- (3) The premises shall be constructed and operated in such a manner so as not to interfere with the amenity of the neighbourhood by reason of the emission of discharge of noise, fumes, vapour, steam, soot, ash, dust, waste water, waste water products, grit, oil or other harmful products of the industry.
- (4) All work shall be carried out inside the premises and not in adjacent forecourts, yards, accessways, car parking areas or on Council's footpath.
- (5) The dwellings shall be connected to the reticulated sewerage scheme prior to any occupation of the development or the issue of any Occupation Certificate for the new additions. Evidence of connection in the form of a plumber's certificate shall be submitted to the Principal Certifying Authority.
- (6) The dwellings shall not be occupied or used until an Occupation Certificate is issued by the Principal Certifying Authority.

## **14. LANDSCAPING**

**These conditions have been imposed to reduce the impact of any development activity on the landscape/scenic quality through vegetation works and maintenance.**

### **These conditions apply to stage 2**

- (1) The landscape plan is to be updated to be consistent with Floor Plan DA 02 dated 20/04/2022 and submitted to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate. Landscaping is to be installed in accordance with the final Approved Plan prior to the release of the occupation certificate. The landscaping must be maintained in accordance with the details provided on that Plan at all times.

## **15. SECTION 7.11 LOCAL CONTRIBUTIONS**

**These conditions have been imposed to ensure the adequate provision of public facilities required as a result of the development.**

### **These conditions apply to stage 1**

- (1) Payment of a contribution for a 2 Lot Subdivision in accordance with Wollondilly Contribution Plan (2020) prior to the release of the Subdivision Certificate and have been calculated in the following manner:

|                      |          |
|----------------------|----------|
| Road and Transport   | \$9,933  |
| Open Space           | \$7,656  |
| Community Facilities | \$2,167  |
| Car Parking          | \$0      |
| Plan Management      | \$244    |
| TOTAL                | \$20,000 |

These figures are reviewed quarterly in accordance with the provisions of the Wollondilly Contributions Plan (2020) and an updated figure must be obtained from Council at least 5 working days prior to time of payment by contacting [contributions@wollondilly.nsw.gov.au](mailto:contributions@wollondilly.nsw.gov.au).

Wollondilly Contributions Plan (2020) may be viewed on the NSW Planning Portal or Wollondilly Shire Council's Website.

## **16. STREET ADDRESSING**

**These conditions are imposed in order to ensure the development complies with the requirements of the New South Wales Address Policy as published by the Geographical Names Board of New South Wales.**

### **These conditions apply to stage 1**

- (1) Prior to the issue of a Subdivision Certificate for the subdivision an application for street addresses for all lots within the subdivision shall be submitted to Council in accordance with Section 5.2 of the NSW Address Policy.

## **17. SUBDIVISION PLANS**

**These conditions have been imposed:**

- (a) **To ensure the submission of Subdivision Plans to the specifications of Land and Property Information for registration.**

- (b) To submit the required documentation for the creation of property restrictions and easements as specified.

**These conditions apply to stage 1**

- (1) A letter from a Registered Surveyor shall be submitted to Council certifying that no services of Public Utility or waste water disposal presently connected to existing buildings straddle proposed boundaries after subdivision.
- (2) Submission to Council of one digital copy of the Linen Plan of Subdivision for certification by the Chief Executive Officer and lodgement at NSW Land Registry Services. A fee for the release of the Subdivision Certificate applies.
- (3) Existing easements and natural watercourses are to be marked on the Linen Plan of Subdivision.
- (4) The development shall be completed in accordance with the relevant plans and conditions of consent relevant to each stage of the development prior to the release of the Subdivision Certificate for that stage.

**18. PRESCRIBED CONDITIONS UNDER THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979.**

**These conditions are imposed as they are mandatory under the Act.**

**These conditions apply to stage 2**

- (1) **COMPLIANCE WITH BUILDING CODE OF AUSTRALIA AND INSURANCE REQUIREMENTS UNDER THE HOME BUILDING ACT 1989**
  - (a) For the purposes of section 4.17 (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:
    - (i) that the work must be carried out in accordance with the requirements of the *Building Code of Australia*,
    - (ii) in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
  - (b) For the purposes of section 4.17 (11) of the Act, it is prescribed as a condition of a development consent for a temporary structure that is used as an entertainment venue, that the temporary structure must comply with Part B1 and NSW Part H102 of Volume One of the *Building Code of Australia* .
  - (c) This clause does not apply:

- (i) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4), or
  - (ii) to the erection of a temporary building, other than a temporary structure to which subclause (b) applies.
- (d) In this clause, a reference to the *Building Code of Australia* is a reference to that Code as in force on the date the application is made for the relevant:
- (i) development consent, in the case of a temporary structure that is an entertainment venue, or
  - (ii) construction certificate, in every other case.

**Note: There are no relevant provisions in the *Building Code of Australia* in respect of temporary structures that are not entertainment venues.**

## (2) ERECTION OF SIGNS

- (a) For the purposes of section 4.17 (11) of the Act, the requirements of subclauses (b) and (c) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- (b) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the principal certifying authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.
- (c) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- (e) This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the Act, to comply with the technical provisions of the State's building laws.
- (f) This clause applies to a development consent granted before 1 July 2004 only if the building work, subdivision work or demolition work involved had not been commenced by that date.

**Note: Principal Certifiers and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause**

**227A of the *Environmental Planning and Assessment Regulation 2000* which currently imposes a maximum penalty of \$1,100).**

**(3) NOTIFICATION OF HOME BUILDING ACT 1989 REQUIRMENTS**

- (a) For the purposes of Section 4.17 (11) of the Act, the requirements of this condition are prescribed as conditions of a Development Consent for development that involves any residential building work within the meaning of the *Home Building Act 1989*.
- (b) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - (a) the name and licence number of the principal contractor; and
    - (b) the name of the insurer by which the work is insured under Part 6 of that Act.
  - (ii) in the case of work to be done by an owner-builder:
    - (a) the name of the owner-builder; and
    - (b) if the owner-builder is required to hold an owner-builder permit under the Act, the number of the owner-builder permit.
- (c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under sub-condition (b) becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (d) This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the Act, to comply with the technical provisions of the State's building laws.

**ADVICES**

**These conditions apply to all stages**

- (1) During the course of construction, care must be taken to prevent damage to any public utility or other service and the applicant will be held responsible for any damage caused by him or his agents, either directly or indirectly. Any mains, services, poles, surface fittings etc., which require alterations shall be altered at the applicants expense and to the satisfaction of Council and the authority concerned.



- (2) The following service providers should be contacted before commencement of construction to establish their requirements:
- Dial before you dig (various services) 1100
  - Telstra (telephone) 1 800 810 443
  - Endeavour Energy (electricity) 131 081
  - AGL (gas) 131 245
  - Sydney Water (water & sewer) 132 092
- (3) At all times work is being undertaken within the public road, adequate precautions shall be taken to warn, instruct and guide road user's safety around the work site with a minimum of disruption.
- (4) All reasonable efforts shall be taken to protect the public footway and road pavement from damage during the course of construction. Restoration of any damaged road or footway shall be at the applicant's expense. A builder's security deposit is to be lodged with Council prior to any work being undertaken on the property. Any costs incurred by Council as a result of repairing damages caused directly or indirectly by the development will be deducted from the security deposit.
- (5) The applicant is advised that Council reserves the right to restrict the days and hours of operation if considered necessary to prevent the emission of "offensive noise" as defined in the Protection of the Environment Operations Act, 1997.

**Offensive noise** means noise:

- (a) that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:
- (i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted; or
  - (ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted; or
- (b) that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.
- (6) **This Consent does not permit the commencement of construction unless a Construction Certificate has been issued. For details about obtaining a Construction Certificate contact Council's Building Services Section for building works or Council's Infrastructure Planning Section for subdivision works.**