



## Land and Environment Court New South Wales

Case Name:	<b>Merman Investments Pty Ltd v Woollahra Municipal Council</b>
Medium Neutral Citation:	[2023] NSWLEC 1107
Hearing Date(s):	Conciliation Conference commencing 1 December 2022
Date of Orders:	10 March 2023
Date of Decision:	10 March 2023
Jurisdiction:	Class 1
Before:	Harding AC
Decision:	<p>The Court Orders that:</p> <ol style="list-style-type: none"><li>(1) The appeal is upheld.</li><li>(2) Development Application DA66/2022/1, for alterations and additions to the approved Residential Flat Building at 3 Wiston Gardens, Double Bay, (otherwise known as Lot 4 DP 15968), is determined by way of granting development consent, subject to the conditions set out in Annexure "A".</li><li>(3) The Applicant is to pay those costs of the Respondent that have been thrown away as a result of the amendment of the application for development consent referred to in paragraph (2) above, pursuant to section 8.15(3) of the <i>Environmental Planning and Assessment Act 1979</i>, as agreed or assessed.</li></ol>
Catchwords:	DEVELOPMENT APPLICATION – residential flat building – clause 4.6 objections to height and floor space ratio controls – agreement
Legislation Cited:	<p>Environmental Planning and Assessment Act 1979, ss 8.7, 8.15 Land and Environment Court Act 1979, s 34 State Environmental Planning Policy Amendment (Water Catchments) 2022</p>

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004  
State Environmental Planning Policy (Biodiversity and Conservation) 2021, s 6.65, Chs 6-12  
State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6  
Woollahra Local Environmental Plan 2014, cll 4.3, 4.4, 4.6, 5.21, 6.1

Category: Principal judgment

Parties: Merman Investments Pty Ltd (Applicant)  
Woollahra Municipal Council (Respondent)

Representation: Counsel:  
A Gadiel (Solicitor)(Applicant)  
D Le Breton (Solicitor) (Respondent)

Solicitors:  
Mills Oakley (Applicant)  
HWL Ebsworth Lawyers (Respondent)

File Number(s): 2022/246647

Publication Restriction: No

## JUDGMENT

- 1     **COMMISSIONER:** This is an appeal pursuant to s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) by Merman Investments Pty Ltd (the Applicant) against Woollahra Council (the Respondent). The Applicant filed this appeal against the deemed refusal of the Development Application DA66/2022/1 on 19 August 2022.
- 2     The Development Application seeks Development Consent for alterations and additions to the approved Residential Flat Building at 3 Wiston Gardens, Double Bay, otherwise known as Lot 4 DP 15968. The original proposal, the subject of Development Consent DA325/2020/1, was approved by the Court on 1 October 2021 and is in the process of construction.
- 3     The Court arranged a conciliation conference between the parties pursuant to s 34 of the *Land and Environment Court Act 1979* (the LEC Act). This commenced on 1 December 2022.
- 4     At the conciliation conference, the parties reached an in principle agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. The conciliation process was adjourned to allow the parties to finalise agreements. The proposed decision was to grant Development Consent, to the Development Application, subject to agreed outcomes and agreed conditions.
- 5     The Development Application involves a number of changes to the approved development. This included a variety of internal reconfigurations as well as adjustments to external terrace areas and facades.
- 6     Pursuant to s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' agreement if the proposed decision, the subject to the agreement, is a decision that the Court could have made in the proper exercise of its functions.

## **Breach of Development Standards**

- 7 The parties agree that a variation to the “Height of Building” (HoB) and “Floor Space Ratio” (FSR) Development Standards, pursuant to cll 4.3 and 4.4 of the Woollahra Local Environmental Plan 2014 (WLEP 2014), can be supported.

### **Clause 4.6(4) ‘Exceptions to development standards’ (Height of Buildings)**

- 8 Clause 4.3(2) of the WLEP 2014, by reference to the Council’s ‘Height of Buildings Map’, establishes a maximum building height for the site of 10.5m. The proposed development contravenes this standard.
- 9 A written request pursuant to cl 4.6 of the WLEP 2014, dated December 2022, has been prepared by Gyde consultants. The FSR cl 4.6 request adequately demonstrates that:
- (1) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
  - (2) there are sufficient environmental planning grounds to justify contravening the development standard.
- 10 The written request notes that, at the time of lodgement of this application, the site had been extensively excavated in anticipation of the proposed construction. As a result, ground levels at the time were the excavated levels, not the ground levels that existing prior to excavation commencing.
- 11 This change in ground level has resulted in a significant numerical increase in the measured HoB compared with the original Development Application outcomes. The physical form of the proposed building remains similar to the original approved development but the excavation has increased the HoB to between 12.51m to 22.45m.
- 12 The written request states that the proposed development is in the public interest because it is consistent with the objectives of the development standard

and the zone objectives. In particular, the written request also makes the following agreed observations:

- (1) The proposed development will be consistent with the desired future character of the neighbourhood.
- (2) The possible solar access issues that may arise from the variations have been carefully considered and found to be acceptable.
- (3) The possible impact on views has been assessed and considered acceptable.

**Clause 4.6(4) 'Exceptions to development standards' (floor space ratio)**

- 13 Clause 4.4(2) of the WLEP 2014, by reference to the 'Floor Space Ratio Map', establishes a maximum FSR for the site of 0.65:1. The proposed development contravenes this standard.
- 14 A written request pursuant to cl 4.6 of WLEP 2014, dated December 2022, has been prepared by Gyde consultants. The FSR cl 4.6 request adequately demonstrates that:
  - (1) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
  - (2) there are sufficient environmental planning grounds to justify contravening the development standard.
- 15 The written request notes that this Development Application seeks an increase in the approved FSR from 1.12:1 to a proposed FSR of 1.58:1. The written request sets out that the increase is largely attributable to the conversion of what was basement storage areas on Level 1 and 2. In addition, adjustments to "existing ground line" to the deepest point of excavation have changed the floor area to be included in the gross floor area. This changes the method of



calculation of FSR and results in a significant numerical increase without changing the building form.

- 16 The written request states that the proposed development is in the public interest because it is consistent with the objectives of the development standard and the zone objectives. In particular, the written request also makes the following agreed observations:

- (1) The numerical changes in the calculated gross floor area do not result in a significant change to the overall presentation of the development.
- (2) Notwithstanding the increased non-compliance, the building envelope remains consistent with the approved building envelope and the form of envelope considered forming existing the Development Consent.
- (3) The re-design improves the overall presentation of the building.
- (4) Impacts on views from adjoining premises are minimal and remain consistent with the approved development.

### **Upholding the written request to vary Development Standards**

- 17 The parties support upholding the written requests both in terms of the merit and jurisdictional considerations. As noted, I must dispose of the proceedings in accordance with the parties' agreement, if the proposed decision, the subject to the agreement, is a decision that the Court could have made in the proper exercise of its functions.
- 18 I have reviewed the amended cl 4.6 written requests for jurisdictional content. It is for the reasons outlined above that I am satisfied that the cl 4.6 written request, for the variation to the Height of Building Development Standard and to the Floor Space Ratio Development Standard, address the matters raised by cl 4.6 of the WLEP 2014. The decision to uphold the written request, to vary the Height of Building Development Standard, is a decision that the Court could have made in accordance with s 34(3) of the LEC Act.

19 In respect to other matters, I am also satisfied that the decision is one that the Court could make in the proper exercise of its functions. In reaching that state of satisfaction, I note the following:

- (1) Pursuant to the WLEP 2014, the subject site is zoned R3 Medium Density Residential. In determining the Development Application, I have had regard to the objectives of the zone.
- (2) The application was placed on public notification from 16 to 31 March 2022. The Council received three submissions raising a number of merit and jurisdictional issues which have been considered. These included concerns regarding the validity of the cl 4.6 objection, concerns over bulk and scale, view loss, privacy impacts and solar access issues. The notification requirements under the EPA Act have been satisfied.
- (3) A BASIX Certificate No. 1115315M\_07 was issued on 22 February 2022 to satisfy the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- (4) As required by s 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021, consideration has been given to whether the site is contaminated. The land requires remediation and will be suitable for the purpose for which the development is proposed to be carried out once remediation has been undertaken as required by the conditions of the existing development consent 'DA325/2020'.
- (5) Consideration has been given to the requirements of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP).
  - (a) By virtue of the savings provision in s 6.65 of the current Biodiversity and Conservation SEPP, Chs 6-12 of the Biodiversity and Conservation SEPP as in force immediately before their repeal by State Environmental Planning Policy Amendment

(Water Catchments) 2022 continue to apply to the proposed development.

- (b) This means that Chs 6-12 of the Biodiversity and Conservation SEPP as at 20 November 2022 (the applicable Biodiversity and Conservation SEPP chapters) apply to the proposed development instead of Chs 6-12 of the current Biodiversity and Conservation SEPP.
  - (c) There are no matters in the applicable Biodiversity and Conservation SEPP chapters on which the Court must form an opinion in order for the Court to have jurisdiction to grant development consent for the proposed development.
- (6) Clause 5.21 of the WLEP 2014 “Flood Planning” applies to the site and the site is identified as flood affected. Council’s drainage engineer has undertaken an assessment of the proposal and considers the proposed works to be acceptable, subject to the conditions provided at Annexure A. The proposed development:
- (a) is compatible with the flood function and behaviour on the land;
  - (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties;
  - (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood;
  - (d) incorporates appropriate measures to manage risk to life in the event of a flood; and



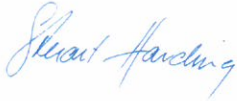
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.
  - (7) Clause 6.1 of the WLEP 2014 applies to the subject site and the site is identified as Class 5 and a small proportion of the site as Class 2 on the Acid Sulfate Soils Map. Development consent must not be granted under cl 6.1 'Acid sulfate soils' of the WLEP 2014 unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority. The report was provided and endorsed under the Original Consent.
- 20 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required, under s 34(3) of the LEC Act, to dispose of the proceedings in accordance with the parties' agreement. I was not required to make, and have not made, any assessment of the merits of the Development Application against the discretionary matters that arise pursuant to the EPA Act.

## Orders

- 21 The final orders to give effect to the parties' agreement under s 34(3) of the *Land and Environment Court Act 1979* are:
- (1) The appeal is upheld.
  - (2) Development Application DA66/2022/1, for alterations and additions to the approved Residential Flat Building at 3 Wiston Gardens, Double Bay, (otherwise known as Lot 4 DP 15968), is determined by way of granting development consent, subject to the conditions set out in Annexure "A".
  - (3) The Applicant is to pay those costs of the Respondent that have been thrown away as a result of the amendment of the application for development consent referred to in paragraph (2) above, pursuant to

section 8.15(3) of the *Environmental Planning and Assessment Act* 1979, as agreed or assessed.

I certify that this and the preceding **7** pages are a true copy of my reasons for judgment.



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**S Harding**

**Acting Commissioner of the Court**

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## Annexure A

### DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

<b>Development Application No:</b>	DA66/2022
<b>Development:</b>	Alterations and additions to the approved residential flat building the subject of development consent DA325/2020/1.
<b>Site:</b>	Lot 4 in DP15968 (also known as 3 Wiston Gardens, Double Bay, NSW).

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

**Date of determination:** 10 March 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 4 in DP15968 (also known as 3 Wiston Gardens, Double Bay, NSW).

The conditions of consent are as follows:

## A. General Conditions

### A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* ("the *Act*") and the provisions of the *Environmental Planning and Assessment Regulation 2000* ("the *Regulation*") such conditions being reasonable and relevant to the development as assessed pursuant to section 4.15 of the *Act*.

Standard Condition: A1 (Autotext AA1)

### A.2 Definitions

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

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

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

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

**Council** means Woollahra Municipal Council

**Court** means the Land and Environment Court

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

**Stormwater drainage system** means all works, facilities and documentation relating to:

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

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

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

**PC** means the Principal Certifier under the *Act*.

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

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

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

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

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

**Woollahra LEP** means *Woollahra Local Environmental Plan 2014*

**Woollahra DCP** means *Woollahra Development Control Plan 2015*

**Work** for the purposes of this consent means:

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

### A.3 Notice of Modification of DA325/2020

Pursuant to section 4.17(5) of the *Environmental Planning and Assessment Act 1979*, a Notice of Modification of Development Consent DA325/2020 in accordance with section 67 of the *Environmental Planning & Assessment Regulation 2021* (**Notice of Modification**) is required to be delivered to Council prior to any works commencing under this consent.

The Notice of Modification is to provide for DA325/2020 to be modified in accordance with Condition A.4 of this consent.

### A.4 Modification of DA325/2020

The consent granted to DA325/2020 dated 1 October 2021 (as modified by DA325/2020/2 on 20 June 2022) is required to be modified as follows:

#### **Deletion and Replacement of Conditions:**

Condition A.3 is to be deleted and replaced with new condition A.3 as follows:

#### ***A.3 Approved Plans and Supporting Documents***

*Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans and supporting documents listed below as submitted by the Applicant unless modified by any following condition.*

Reference	Description	Author/Drawn	Date(s)
3.0000 Rev. G	Cover Sheet & Basix	All by Tzannes	03/02/2023
3.0001 Rev. F	Site and Roof Plan		19/12/2022
3.0002 Rev. C	Site Analysis		19/12/2022
0500 Rev. C	Demolition Plan		29/07/2020
3.0600 Rev. E	Basement and Ground Level Deletion Plans		15/11/2022
3.0601 Rev. G	Level 1 and Level 2 Deletion Plans		13/12/2022
3.0602 Rev. H	Level 3 and Level 4 Deletion Plans		19/12/2022
3.0603 Rev. D	Roof Terrace and Roof Deletion Plans		18/02/2022
3.1000 Rev. E	Basement and Ground Level Amended Plans		15/11/2022



3.1001 Rev. K 3.1002 Rev. K 3.1003 Rev. H 3.2000 Rev. L 3.2001 Rev. J 3.2002 Rev. L 3.3000 Rev. K 3.3001 Rev. H 5800 Rev. B	Level 1 and Level 2 Amended Plans Level 3 and Level 4 Amended Plans Roof Terrace and Roof Amended Plans Elevations – East & West Elevation – North Elevation – South Section 1 Section 2 Sample Board of Externals and Colours		19/12/2022 19/12/2022 19/12/2022 19/12/2022 19/12/2022 19/12/2022 19/12/2022 15/11/2022 29/07/2020
1115315M_07	BASIX Certificate	NSW Department of Planning, Industry and Environment	22/02/2022
33308BrptRev1	Geotechnical Report	JK Geotechnics	27/07/2020
EN-N20_145	Stormwater Management Plan (4 sheets, drawings SW00, SW01, SW02, SW03)	IGS	03/06/2021
200391.01FD	Traffic and Parking Impacts Assessment, Issue D	McLaren Traffic Engineering	05/08/2020
200391.02FA	Letter of Response to Council Comments	McLaren Traffic Engineering	16/09/2020
210155.01FA	Letter of Response to Traffic and Parking Contentions	McLaren Traffic Engineering	29/06/2021
Plan No.s 1.1 – 1.13, L500/F – L506/F	Landscape Plan No.s 1.1 – 1.13, L500/F – L506/F	Oculus	18/02/2022
	Arboricultural Impact Assessment Report	Andrew Morton – Earthscape Horticultural Services	August 2020
20200606.1	Acoustic Report	Acoustic Logic	06/07/2020
C201009_RRPT_14Apr 2021	Detailed Site Investigation	Consara Contaminated Sites	14/04/2021
C201009_RAP_14April2 021	Remedial Action Plan	Consara Contaminated Sites	14/04/2021

**Note:** These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the Act modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any Construction Certificate.)

Standard Condition: A5 (Autotext AA5)

Condition C.1 is to be deleted and replaced with new condition C.1 as follows:

### **C.1 Modification of Details of the Development (section 4.17(1)(g) of the Act)**

The approved plans and the Construction Certificate plans and specification, required to be submitted to the Certifying Authority pursuant to section 7 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, must detail the following amendments:

- a) **Deleted.**
- b) **Photovoltaic panels must:**
  - i) be in line with the roof surface or no more than 300mm above and parallel with the roof;

- ii) be angled to reduce reflectivity; and
- iii) not involve mirrors or lenses to reflect or concentrate sunlight.

*This condition is imposed to ensure compliance with Control C1 of Part E6.3 of the Woollahra Development Control Plan 2015.*

- c) **Acoustic screening** to the south-facing side of the roof terrace as shown on the approved plans listed in condition A.3 is to be obscure glazing to ensure visual and acoustic privacy impacts to adjoining properties are mitigated.
- d) **All privacy screens** to the northern elevation are to be fixed at an angle of 45 degrees, facing east, to ensure visual privacy impacts to the adjoining properties at 2 Wiston Gardens and 19A Eastbourne Road are mitigated.
- e) **An amended Landscaping Plan** must be provided incorporating the additional planter boxes and associated landscaping as indicated in the amended plans DWG No. SK79 Rev B dated 9 September 2021 prepared by Tzannes, and reflecting the planter profile on level 4 as detailed in the drawings approved under condition A.3.

**Note:** The effect of this condition is that it requires design changes and/or further information to be provided with the Construction Certificate drawings and specifications to address specific issues identified during assessment under section 4.15 of the Act.

**Note:** Section 20 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 prohibits the issue of the relevant Construction Certificate subject to this condition unless the Certifying Authority is satisfied that the condition has been complied with.

**Note:** Section 19 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 prohibits the issue of any Construction Certificate that is inconsistent with this consent.  
Standard Condition: C4 (Autotext CC4)

Condition C.3 is to be deleted and replaced with new condition C.3 as follows:

### **C.3 BASIX Commitments**

The Applicant must submit to the Certifying Authority BASIX Certificate No. **1115315M\_07** with any application for a Construction Certificate.

**Note:** Where there is any proposed change in the BASIX commitments the Applicant must submit of a new BASIX Certificate to the Certifying Authority and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (see: clauses 145 and 146 of the Regulation) the Applicant will be required to submit an amended development application to Council pursuant to section 4.55 of the Act.

All commitments in the BASIX Certificate relevant to the works that are the subject of a Construction Certificate must be shown on the Construction Certificate plans and specifications prior to the issue of any Construction Certificate.

**Note:** Section 19(1)(a) of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 provides: "A certifying authority must not issue a Construction Certificate for building work unless it is satisfied of

*the following matters: (a) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires".*  
Standard Condition: C7

Condition C.15 is to be deleted and replaced with new condition C.15 as follows:

### **C.15 Flood Protection**

*The Construction Certificate plans and specifications, required by section 19 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL) detailing:*

- a) A permanent flood risk management plan shall be installed in a prominent area of the basement carpark.*
- b) The driveway entry shall be protected by a mechanical flood barrier with the top of the barrier, when deployed, set to the flood planning level of 3.5m AHD.*
- c) The pedestrian entry shall be protected by a mechanical flood barrier with top of the barrier, when deployed, set to the flood planning level of 3.7m AHD.*
- d) Permanent brass plaques shall be mounted adjacent to all mechanical flood barriers explaining their purpose and operation*
- e) Flood compatible materials shall be used for all flood exposed construction*
- f) All flood exposed electrical wiring and equipment shall be waterproofed.*
- g) All flood protection measures shall be inspected and certified as fit for purpose after construction is complete by a engineer experienced in flood mitigation.*

*Flood protection is to comply with Woollahra DCP 2015, Part E General Controls for All Development, Chapter E2 –Stormwater and Flood Risk Management.*

**Note:** *The driveway profile, gradients and transitions must be in accordance with Australian Standard 2890.1 – 2004, Part 1: Off-street car parking. The driveway profile submitted to Council must contain all relevant details: reduced levels, proposed grades and distances. Council will not allow alteration to existing reduced levels within the road or any other public place to achieve flood protection.*  
Standard Condition C.54 (autotext CC54)

Condition H.1 is to be deleted and replaced with new condition H.1 as follows:

### **H.1 Fulfillment of BASIX Commitments – clause 154B of the Regulation**

*All BASIX commitments must be effected in accordance with the BASIX Certificate No. 1115315M\_07.*

Condition I.5 is to be deleted and replaced with new condition I.5 as follows:

### **I.5 Maintenance of BASIX Commitments**

*All BASIX commitments must be maintained in accordance with the BASIX Certificate No. 1115315M\_07.*

**Note:** *This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.*  
Standard Condition: I24



**New Conditions to be inserted:**

The following new conditions are inserted:

**C.26 Payment of Long Service Levy, Security, Contributions and Fees**

The Certifying Authority must not issue any certificates under section 6.4 of the Act until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a Construction Certificate, Subdivision Certificate or Occupation Certificate, as will apply.

**\*THE TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES OUTLINED IN THE TABLE BELOW ARE IN ADDITION TO THOSE SET OUT IN CONDITION C.2.**

Description	Amount	Indexed	Council Fee Code
<b>LONG SERVICE LEVY</b> under Building and Construction Industry Long Service Payments Act 1986			
<b>Long Service Levy</b> <a href="http://www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator">www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator</a>	Contact LSL Corporation or use online calculator	No	
<b>SECURITY</b> under section 4.17(6) of the Environmental Planning and Assessment Act 1979			
<b>Property Damage Security Deposit -</b> making good any damage caused to any property of the Council	\$12,159.00	No	T115
<b>DEVELOPMENT LEVY</b> under Woollahra Section 7.12 Development Contributions Plan 2022 This plan may be inspected at Woollahra Council or downloaded at <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a>			
<b>Development Levy</b> (section 7.12)	\$3,143.80 + Index Amount	Yes, quarterly	T96
<b>INSPECTION FEES</b> under section 608 of the Local Government Act 1993			
Security Administration Fee	\$215.00	No	T16
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>	<b>\$15302.80*</b> plus any relevant indexed amounts and long service levy		

**Building and Construction Industry Long Service Payment**

The long service levy under section 34 of the Building and Construction Industry Long Service Payment Act 1986, must be paid and proof of payment provided to the Certifying Authority prior to the issue of any Construction Certificate. The levy can be paid directly to the Long Service Corporation or to Council. Further information can be obtained from the Long Service Corporation website [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au) or the Long Service Corporation on 131 441.

**How must the payments be made?**

Payments must be made by:

- cash deposit with Council,
- credit card payment with Council, or
- bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable],
- the bank agrees to pay the guaranteed sum without reference to the Applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent,
- the bank guarantee is lodged with the Council prior to the issue of the Construction Certificate, and
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

**How will the section 7.12 levy (formerly known as 94A levy) be indexed?**

To ensure that the value the development levy is not eroded over time by increases in costs, the proposed cost of carrying out development (from which the development levy is calculated) will be indexed either annually or quarterly (see table above). Clause 2.12 of the Woollahra Section 7.12 Development Contributions Plan 2022 sets out the formula and index to be used in adjusting the levy.

**Do you need HELP indexing the levy?**

Please contact Council's Customer Service Team on ph 9391 7000. Failure to correctly calculate the adjusted development levy will delay the issue of any certificate issued under section 6.4 of the Act and could void any such certificate (eg Construction Certificate, Subdivision Certificate, or Occupation Certificate).

**Deferred or periodic payment of section 7.12 levy (formerly known as 94A levy) under the Woollahra Section 7.12 Development Contributions Plan 2022**

Where the Applicant makes a written request supported by reasons for payment of the section 7.12 levy, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

- the reasons given,
- whether any prejudice will be caused to the community deriving benefit from the public facilities,
- whether any prejudice will be caused to the efficacy and operation of the Plan, and
- whether the provision of public facilities in accordance with the adopted works schedule will be adversely affected.

Council may, as a condition of accepting deferred or periodic payment, require the provision of a bank guarantee where:

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time



*limited bank guarantee or a bank guarantee with an expiry date is not acceptable],*

- *the bank agrees to pay the guaranteed sum without reference to the Applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent,*
- *the bank guarantee is lodged with the Council prior to the issue of the Construction Certificate, and*
- *the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.*

*Any deferred or periodic payment of the section 7.12 levy will be adjusted in accordance with clause 2.12 of the Plan. The Applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.*

*Standard Condition: C5*

#### **K.11 Pruning or Removing a Tree Growing on Private Property**

*The provisions of Chapter 2 ('Vegetation in non-rural areas') of the (State Environmental Planning Policy (Biodiversity and Conservation) 2021 and the Woollahra Development Control Plan 2015 (DCP), Chapter E3 –Tree Management, may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment. Such an application is not required in relation to any tree removal or pruning that is authorised by this development consent.*

*Before you prune or remove a tree, make sure you read all relevant conditions. You can obtain a copy of the Woollahra DCP from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or call Council on 9391 7000 for further advice.*

*Standard Condition: K19 (Autotext KK19)*