



## Land and Environment Court New South Wales

Case Name: **Wells v Woollahra Municipal Council**

Medium Neutral Citation: [2023] NSWLEC 1141

Hearing Date(s): 9 March 2023

Date of Orders: 29 March 2023

Date of Decision: 29 March 2023

Jurisdiction: Class 1

Before: Horton C

Decision: The Court orders that:  
(1) The appeal is upheld.  
(2) Development application No DA 304/2022/1 for the demolition of the existing dwelling and construction of a new dwelling, swimming pool and associated landscaping, at 48 Kings Road, Vaucluse (legally known as Lot 93 in DP 10127) is determined by the grant of consent, subject to conditions of consent at Annexure A.  
(3) All exhibits are returned, except for Exhibit B, G and 3.

Catchwords: DEVELOPMENT APPLICATION: dwelling house development in R2 Low Density residential zone – view loss

Legislation Cited: Environmental Planning and Assessment Act 1979, ss, 4 15, 8.7  
Environmental Planning and Assessment Regulation 2021  
Land and Environment Court Act 1979, s34AA  
Roads Act, s 138  
State Environmental Planning Policy (Biodiversity and Conservation) 2021, s 10.10, Chs 2, 6, 7, 8, 9, 10, 11, 12  
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004  
State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6  
Woollahra Local Environmental Plan 2014, cll 4.3, 6.1, 6.2

Cases Cited:	<p>Furlong v Northern Beaches Council [2022]  NSWLEC 1208  Stockland Development v Manly Council [2004]  NSWLEC 472  Tenacity Consulting v Warringah Council [2004]  NSWLEC 140  Zhang v Canterbury City Council (2001) 115 LGERA  373</p>
Texts Cited:	<p>Woollahra Development Control Plan 2015</p>
Category:	<p>Principal judgment</p>
Parties:	<p>Brett Wells (Applicant)  Woollahra Municipal Council (Respondent)</p>
Representation:	<p>Counsel:  J Lazarus SC (Applicant)  P Rigg (Respondent)</p> <p>Solicitors:  Mills Oakley (Applicant)  Peter Rigg (Respondent)</p>
File Number(s):	<p>2022/297627</p>
Publication Restriction:	<p>Nil</p>

## JUDGMENT

- 1 **COMMISSIONER:** The Applicant in these proceedings, Mr Brett Wells, lodged development application No DA 304/2022/1 with Woollahra Municipal Council on 29 July 2022, seeking consent for the demolition of the existing dwelling house and construction of a new three-storey dwelling, swimming pool and associated landscaping and siteworks, on land known as 48 Kings Road Vaucluse.
- 2 The development application was refused by the Woollahra Local Planning Panel on behalf of Woollahra Municipal Council, the Respondent in these proceedings, on 23 April 2020.
- 3 The Applicant filed an appeal under s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) in Class 1 of the Court's jurisdiction.
- 4 The appeal was listed for mandatory conciliation on 8 March 2023, in accordance with the provisions of s 34AA of the *Land and Environment Court Act 1979* (LEC Act).
- 5 The proceedings commenced on site at which the Court, in the company of the legal representatives and experts, heard oral submissions from a number of local residents from neighbouring properties.
- 6 The Court was taken to the follow properties:
  - (1) No 57 Kings Road, where a view to the Sydney Harbour Bridge is enjoyed through the side setback between the existing dwelling and No 46 Kings Road to the south.
  - (2) No 44 Kings Road, where from the ground floor kitchen and bathroom, views to North Head and Watsons Bay are enjoyed, and to a rear living area and west-facing terrace on the first floor where panoramic views stretch from south of the Sydney city skyline, to Middle Head, Manly and North Head.

- (3) No 46 Kings Road, where from the rear yard, concerns are held as to privacy impacts arising from overlooking from the proposed terraces, and from the first floor where once again sweeping views are enjoyed from living, kitchen, dining areas and a west-facing terrace.
  - (4) No 52 Kings Road, where, from the rear ground floor terrace, concerns are held as to privacy impacts arising from overlooking from a large curved window in the first floor master bedroom.
  - (5) No 18 Princes Avenue, where, from the rear yard, privacy concerns are held from overlooking from north-facing window openings and the proposed uppermost terrace.
  - (6) No 14 Princes Avenue where, from two east facing rooms on the upper level, concerns are held as to privacy from sightlines gained from the upper level terrace of the proposed development.
- 7 The conciliation conference then reconvened at Court where without prejudice discussions were held. The Applicant agreed to amend the proposal, producing amended plans the following day that did not result in agreement between the parties.
- 8 Accordingly, I terminated the conciliation and proceeded forthwith to hearing.
- 9 At the commencement of the hearing, the Applicant sought to amend the development application by Notice of Motion, unopposed by the Respondent who, as the relevant consent authority, accepted the amendment of the application.

### **The site and its context**

- 10 The site, legally described as Lot 93 in DP 10127, is currently occupied by an existing dwelling.



- 11 The lot has a frontage to Kings Road of 18 95m, a rear boundary that measures 10 16m, and a total site area of 613 3m<sup>2</sup>, according to the survey (Exhibit B, Tab 11)
- 12 The site is a part of a discrete suburban block formed by Kings Road and Princes Avenue, bounding 19 properties that essentially radiate from a common alignment of rear yards, arranged to benefit from the ridgeline prospect that affords elevated views to the Pacific Ocean to the east, Manly to the north, and Sydney Harbour and the CBD beyond to the west
- 13 The properties so bounded are all within an R2 Low Density Residential zone, identified by Woollahra Local Environmental Plan 2014 (WLEP), in which dwelling house development is permitted with consent where consistent with the objective for development in the R2 zone
- 14 Those objectives are
- To provide for the housing needs of the community within a low density residential environment
  - To enable other land uses that provide facilities or services to meet the day to day needs of residents
  - To provide for development that is compatible with the character and amenity of the surrounding neighbourhood
  - To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood
- 15 The site is also within the Vaucluse East residential precinct in accordance with the Woollahra Development Control Plan 2015 (WDCP)
- 16 The Precinct character statement for the precinct is set out at Section B1 11 1 of the WDCP in the following terms
- “The Vaucluse East Precinct comprises an elevated plateau which provides an extensive backdrop and significant scenic presentation to Sydney Harbour along its eastern foreshore
- A spectacular feature of the precinct is the public foreshore land on the eastern side of Old South Head Road which contains the Macquarie Lighthouse, a prominent harbour landmark and parkland. The highest parts of the precinct afford 360° views of both the harbour and ocean. Vantage points include

Johnsons Lookout, Samuel Park, Gap Park, Christison Park and Lighthouse Reserve

The precinct contains a wide range of housing types and styles reflecting important stages in its development. Large areas are characterised by Federation and Inter-War bungalows. Inter-War residential flat buildings are also important contributors to the local character. However, the dominant development type is the dwelling house, located within a garden setting and highlighted by consistent street setbacks and side setbacks that allow for views between buildings.

The precinct's exposed location at the plateau of the peninsula has resulted in a sparser foliage and tree canopy compared with the more protected streets of the Vaucluse West precinct."

- 17 The desired future character of the precinct at Section B1 11 2 of the WDCP is in the following terms

'The Vaucluse East precinct is to maintain the evolution of low density residential development, generally through the introduction of well-designed contemporary dwelling houses

Development may be three storeys, but should establish a two storey presentation to the street with a reduced scale on the third floor which will help reduce building bulk and scale

On sloping sites, development should step down the site to maintain views, protect the privacy and solar access of adjoining and adjacent properties, and minimise cut and fill

The built form should not detract from the unique features of the natural landscape, or be of such a scale that it dominates adjoining development, or is visually intrusive when viewed from the streetscape or the harbour

In particular development is to retain views of the harbour from public spaces and provide for view sharing from private properties, these can be achieved by providing suitable side boundary setbacks and fencing, roof forms and thoughtful distribution of building form across the site

Within this precinct, some land fronting Old South Head Road is zoned R3 Medium Density Residential, and may provide opportunities for renewal of existing building stock."

### **The issues are distilled**

- 18 In essence, the dispute relates to the degree of view loss resulting from non-compliances with certain controls within the WDCP
- 19 The Respondent contends that the bulk and scale of the proposed development contravenes the building envelope controls at Section B3 2 1 of the WDCP, and the floorplate size provisions at Section B3 3 of the WDCP

20 The excessive bulk results in view loss from neighbouring properties at Nos 44 and 46 Kings Road that a more skilful design could avoid.

21 The Applicant submits that, firstly, the non-compliances arise from the circumstances of the site and secondly, the only views lost are across a side boundary, and are minor when the totality of the panoramic view available to the affected properties is considered. When these factors are considered, it is appropriate to apply the provisions of the WDCP flexibly, in accordance with s 4.15(3A) of the EPA Act.

22 A photograph of the panoramic view taken from No 44 Kings Road is contained in the architectural plans (Exhibit E), re-produced below. The area of view in contest is located to the right of the Norfolk Pine shown in the image.



23 The Court was assisted by experts in town planning Mr Anthony Betros on behalf of the Applicant, and Mr Max Moratelli on behalf of the Respondent who conferred in the preparation of a joint expert report (Exhibit 2).

24 When the view analysis that forms part of the amended plans at Exhibit E is considered, Mr Moratelli agrees that the views from No 57 Kings Road are improved; that the view loss from No 44 Kings Road is acceptable, and that view loss from a bedroom located on the northern side of No 46 Kings Road is either not affected, or marginally improved if the proposed west facing terrace is amended as drawn in Exhibit H.

- 25 The primary view loss that remains is that currently enjoyed from the west-facing external terrace of No 46 Kings Road, in a direction that is perpendicular to the side boundary to the north, in the direction of North Head.
- 26 The Respondent submits that the Court would find, as it did in *Furlong v Northern Beaches Council* [2022] NSWLEC 1208 (*Furlong*), that the view loss to the North Head peninsula is devastating which alone is a reason to dismiss the appeal.

### **Building envelope controls**

#### *Floorplate*

- 27 Section B3.3 of the WDCP states relevantly that the floorplate control applies to development on land in the R2 zone, but not where a floor space ratio (FSR) control applies.
- 28 It is agreed between the parties that no such FSR control applies to the site, although Mr Rigg submits that a draft local environmental plan containing such a provision has been exhibited, but is not relevant to these proceedings.
- 29 The floorplate control is described in Section B3.3, in part, as follows:

"The development potential for a site is determined by the total floorplate. This is calculated as a percentage of the buildable area.

The **buildable area** is the area of the site that is identified once the front, rear and side setbacks have been established (refer to Figure 10).

The maximum amount of development permitted on the site is determined by multiplying the buildable area by a factor of 1.65 (165%) This is the maximum permitted total floorplate

For example if the buildable area is 150m<sup>2</sup> the maximum floorplate yield is: 150m<sup>2</sup> x 1.65 = 247.5m<sup>2</sup>

The floorplate is measured at each level A level is defined as the space between a floor and a level above. If any part of a level is above 1m above exist ground level that area of the level is counted as floorplate (refer to Figures 11 and 12)."

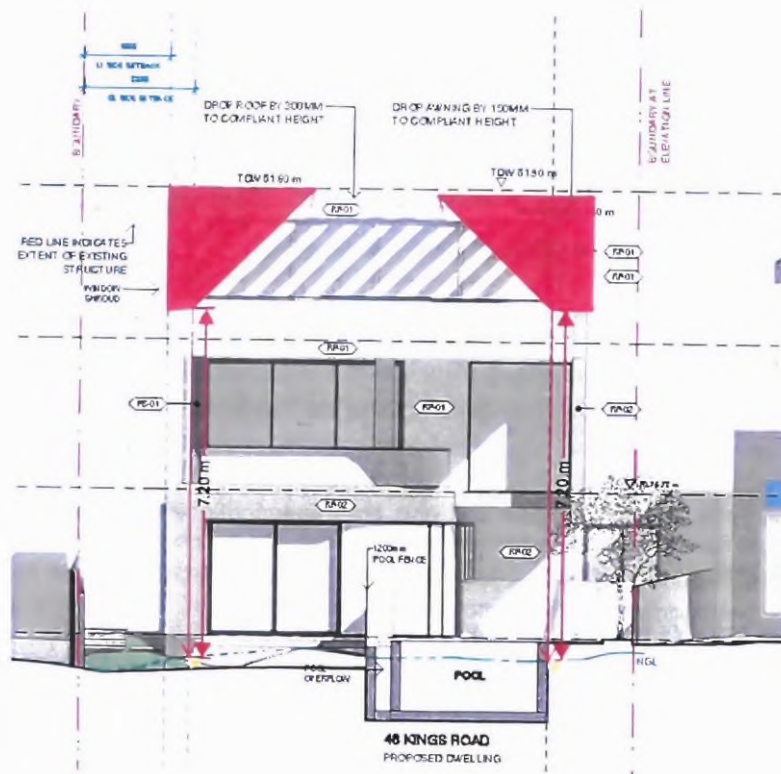
- 30 The Applicant provides calculations at Drawing DA1401 showing a floorplate that exceeds that permitted on the site by around 100m<sup>2</sup>.

- 31 The area calculation undertaken by the Applicant is contested by Mr Moratelli on two grounds:
- (1) Firstly, as the area of the outdoor shower, totalling around 4m<sup>2</sup>, and covered by the rumpus room above, is omitted.
  - (2) Secondly, in the manner in which the contribution made by the area of the garage contributes to the calculation of the floorplate area.
- 32 Mr Betros calculates an exceedance of around 25% over the floorplate permitted on the site, while Mr Moratelli calculates an exceedance of around 43% above that allowed.
- 33 Whatever the numerical exceedance of the floorplate area control in the WDCP, the parties agree that the impact is isolated to the bulk on Level 1. The Respondent argues that the view loss results from failure to reduce the floor area at the upper level as intended by explanatory figures to the floorplate control, such as Figure 13 (Exhibit 4, folio 117).

*Wall height and inclined plane*

- 34 A closely related aspect of the floorplate exceedance, according to the Respondent, is the breach of the wall height and inclined plane control at Section B3.2.5 of the WDCP.
- 35 A wall height of 7.2m, measured from a point above natural ground line, applies to the site. Above this, an inclined plane at 45 degrees from the horizontal dictates the building envelope.
- 36 Mr Moratelli has marked areas of non-compliance with the control at par 37 of the joint expert report, re-produced below.





- 37 The breach of the control also overshadows No 46 Kings Road to a greater extent than would a complying envelope, however I note the solar requirements at Section B3.5.2 of the WDCP are achieved.
- 38 Mr Moratelli's oral evidence is that the pergola awning above the west facing terrace to Level 1 also exceeds the envelope formed by the wall height and inclined plane but that it is the concrete slab forming the terrace itself that obscures a view from No 46 Kings Road to North Head.
- 39 A further setback of the built form at Level 1 would reduce the exceedance of the floorplate control, and more appropriately share views from private property in a manner intended by Section B3.5.3 of the WDCP.

## View loss

- 40 As stated, the site, and other properties in the street, enjoy expansive views in an arc that extends from the west south west, taking in the south of the Sydney city CBD, around to the north to Manly, and north east towards North Head.

- 41 It is commonly held that the proposal will obstruct a portion of the view currently enjoyed by Nos 44 and 46 Kings Road in the direction of North Head.
- 42 The extent of view loss is depicted in the visual analysis that forms part of the architectural drawings, denoted by the drawings Nos LEC011, LEC012 and LEC013.
- 43 Mr Moratelli considers North Head to be an iconic view, embodied in what he describes as the 'golden cliffs' evident in some of the images in evidence, and currently visible from certain vantage points.
- 44 By contrast, the Applicant submits that only a portion of North Head is obscured which nonetheless represents a 'miniscule' proportion of the panorama currently enjoyed by the neighbour at No 46 Kings Road.
- 45 The Applicant acknowledges the Court's planning principle found at *Tenacity Consulting v Waringah Council* [2004] NSWLEC 140 (*Tenacity*) is specifically invoked in Section B3.5.3 of the WDCP, but identifies a distinction in the objectives of the Section between views from the public domain and those from private properties.
- 46 Objective 01 seeks "to protect and enhance existing views and vistas from the public domain", while Objective O3 is "to encourage view sharing as a means of ensuring equitable access to views from private property".
- 47 As such, the objectives place the protection and enhancement of existing views and vistas from the public domain higher than a mere encouragement to share views gained from private property in an equitable manner.
- 48 Additionally, the view loss is experienced over a side boundary, identified in *Tenacity* as more difficult to protect.
- 49 The Respondent submits that North Head should be understood as a whole, as was the case in *Furlong*. A view of the peninsula assists the viewer in locating themselves in Sydney, as a point of orientation.



- 50 The Applicant has foregone no amenity for themselves, and not sought a more skilful design that would share those views now obstructed
- 51 The Respondent has prepared a development control plan following public consultation that is in force and has been consistently applied, consistent with those matters set out in *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472, at [92] The WDCP reflects certain expectations for parts of its area, and which has the effect of confining the intensity of development in that area otherwise permitted by the WLEP subject to view sharing provisions. As such, the provisions of the WDCP should be a focal point in determining this case (*Zhang v Canterbury City Council* (2001) 115 LGERA 373)
- 52 Furthermore, the WDCP adopts the four-step assessment method set out in *Tenacity* with the conclusion that the nature of the view loss is iconic, can be preserved through a more skilful design, without which the impact is devastating and can only be said to result from a proposal that fails to conform to the building envelope controls
- 53 Having considered the evidence of the experts and my own assessment formed at the onsite view, I do not agree that the view loss is devastating for the property at No 46 Kings Road
- 54 When the whole view enjoyed by No 46 Kings Road is understood, the view of North Head, or a portion of it as may be more accurately observed, is gained by a person standing outside on the west facing terrace, away from the panoramic view re-produced at [22], so as to directly address the northern orientation. To do so virtually turns one back on the sweeping panorama of the harbour so as to address the adjoining site at No 48 Kings Road
- 55 When the degree of view loss is assessed in quantitative terms, I accept the Applicant's description of it being miniscule when the quantum of view is understood. In qualitative terms, I consider North Head to be only one of many iconic features of Sydney comprising the panorama enjoyed today, the loss of which does not detract from the magnificent view of Sydney enjoyed from No 46 Kings Road

56 Turning to the reasonableness of the proposal, while the building envelope controls are breached, I accept Mr Betros' evidence that notwithstanding the breach:

- (1) The increased setback to the southern boundary will expand views to the Sydney Harbour Bridge from No 57 Kings Road to include the northern pylon.
- (2) No view loss arises from the breach of the wall height and inclined plane provisions, and the western setback is well within the envelope formed by the geometry of those provisions, other than a portion of the open pergola above the Level 1 terrace.
- (3) The overshadowing to No 46 Kings Road does not result in a non-compliance with solar access requirements of Section B3.5.2 of the WDCP.
- (4) The western setback is well within the rear building alignment, retaining a view to the waters of Watsons Bay, and Manly beyond from the west facing terrace at No 46 Kings Road.

57 In summary, while the proposal unquestionably results in some view loss to Nos 44 and 46 Kings Road, my assessment of the views affected, and from where they are obtained, the extent of impact and the reasonableness of the proposal imposing the impact leads me to the conclusion that it is unreasonable to ask for that portion of the view that is lost, to be retained. Instead, I find the proposed development is sited and designed to enable the sharing of views, consistent with the controls at Section B3.5.3 of the WDCP.

58 While the Respondent invites the Court to follow the decision in *Furlong*, the factual circumstances of the extent of view, the circumstances of the site, and the degree of view retained by the amended plans, are so different as to lead me to a different conclusion.

59 On the basis of the view taken from the first floor of No 57 Kings Road, I find that the breach of the wall height and inclined plane does not result in view loss.

Rather, it is the setback of 2.3m to the south that facilitates views between buildings and which, in the case of No 57 Kings Road, expands the iconic view of the Harbour Bridge.

#### *Privacy and overlooking*

- 60 The Respondent contends that the proposal imposes privacy impacts by overlooking adjoining properties, to the north and south of the subject site, contrary to the objectives and controls at Section B3.5.4 of the WDCP, which apply to habitable rooms.
- 61 The Applicant submits that the proposal has sought to address any overlooking by providing sill heights above the height of the existing windows, which are currently in the order of 750mm at the ground floor, and 600mm at the first floor
- 62 I accept the properties bounded by Kings Road and Princes Avenue currently receive and impose a high degree of mutual overlooking, as a result of the radiating arrangement of lots, the sloping topography and the preference for large openings and external terraces to maximise views.
- 63 In my view the proposal adequately mitigates the degree of overlooking to properties to the north by adopting measures found in the controls at Section B3.5 of the WDCP including deep sills and an intermittent transom, also deep, in the master bedroom, and bedroom 4, and both fixed and operable screening to the large north facing opening to the Level 1 living area.
- 64 The proposal deals with privacy to the south by locating vertical circulation and service areas to that setback, and by proposing no window openings to that elevation.

#### **Jurisdictional preconditions**

- 65 The proposed development complies with the height of building standard at cl 4.3 of the WLEP.

- 66 The site is located within an area identified as class 5 acid sulfate soils by the relevant map at cl 6 1(2) of the WLEP, but is not within 500m of another class of land
- 67 I have considered the extent of earthworks proposed on the site, that is helpfully depicted on architectural drawing DA1403. On the basis of the Geotechnical Investigation Report prepared by Geotechnical Consultants Australia dated 24 November 2022 (Exhibit D), and conditions of consent at Condition C 11, I find the proposal will not have a detrimental impact on the environmental functions, neighbouring uses or features of the surrounding, pursuant to cl 6 2 of the WLEP
- 68 I have also considered whether the site is contaminated in accordance with s 4 6 of the State Environmental Planning Policy (Resilience and Hazards) 2021. Having regard to the historical information contained in the Heritage Assessment and Demolition report prepared by Mr Michael Bogle dated 18 July 2022 (Exhibit B, Tab 8) and the Statement of Environmental effects prepared by ABC Planning dated July 2022 (Exhibit B, Tab 6), I conclude the site is not contaminated and is suitable for the purpose for which development is proposed
- 69 Chapter 2 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity SEPP) applies to the site and the removal of two trees is proposed
- 70 By virtue of certain savings and transitional provisions, Chs 6-12 of the Biodiversity SEPP apply to the site that is within the Sydney Harbour Catchment. I have considered the relevant planning principles at s 10 10 of the Biodiversity SEPP. On the basis of the Stormwater Drainage Plans prepared by AE Consulting Engineers (Exhibit C), I am of the view that water quality and frequency of urban run off will be improved by provision of onsite detention. On the basis of the architectural plans, compliance with the height of building standard and the natural tones selected in materials and finishes nominated on the architectural elevations, I also conclude the proposal will maintain and protect the visual qualities of Sydney Harbour

- 71 The development application is accompanied by a BASIX certificate (Cert No. 1320394S\_04 dated 14 March 2023), prepared by Paul & David Consulting in accordance with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 and the Environment Planning and Assessment Regulation 2021.

**The conditions of consent are disputed**

- 72 At the close of the proceedings, the Court directed that parties confer and file, if possible, an agreed set of without prejudice conditions of consent no later than 16 March 2023.

- 73 The conditions of consent were filed, and three conditions were disputed. They are:

(1) C.1 – Modifications to the details of the development

(2) C.9 – Acoustic certification of mechanical plant and equipment

(3) C.10 – Road and public domain works

(4) F.3 – Certification of Electric Vehicle Charging System

*Modification to the details of the development*

- 74 Condition C.1 (a) and (b) as proposed by the Respondent seeks amendments to the development that would increase the sill height of windows facing north, and the extent of fixed screen to the opening described at [63].

- 75 Similarly, Condition C.1(c) seeks amendments to mitigate view impacts to properties to the south of the site.

- 76 Finally Condition C.1(d) nominates a height for mature planting to the northern boundary.

- 77 The Applicant submits that there is no evidence before the Court in respect of the amendments sought by the Respondent in Condition C.1(a) and (b), and





elevation, a mature plant height of 4m appears to balance the value of northern sunlight into rooms on the subject site, with the privacy of neighbours to the north. The Applicant's preferred form of wording to Condition C.1(d) is adopted.

#### *C.9 – Acoustic Certification of Mechanical Plant and Equipment*

- 81 The Respondent seeks to impose a condition requiring certification by an acoustic engineer that the noise from mechanical plant and equipment will not exceed the background noise level, where measured from the nearest strata, stratum or community title land.
- 82 Acoustic performance was not contended in the Statement of Facts and Contentions filed 11 November 2022. Nor was the Court addressed in submissions on the matter.
- 83 The Applicant proposes an alternative form of words that address the noise emitted from swimming pool or spa pump, where measured from the boundary.
- 84 However, the architectural plans depict air conditioning unit(s) and a Hot water Service south of the lift, close to the boundary with No 46 Kings Road. As it is unusual for a dwelling this scale to assume the positioning of such plant and equipment on a roof, in an external location, I find the Applicant's preferred form of the condition unnecessarily constrains the performance required to be achieved to swimming/spa plant.
- 85 That said, as I do not understand where there may be a strata, stratum or community title land to which the Respondent's condition is directed, I adopt the Respondent's preferred form of Condition C.9 but for two aspects that are:
- (1) Firstly, the performance to be achieved in background level plus 5dB(A) as is commonplace in such circumstances, and
  - (2) Secondly, the noise level is to be certified at the southern boundary.



### *C.10 Road and Public Domain works*

- 86 The Respondent seeks to impose a condition requiring a separate application to be made, under s 138 of the Roads Act, for the removal of the existing vehicular cross over, and construction of a new 3m wide cross over.
- 87 The Applicant seeks to reuse the existing vehicle cross over which it submits is in good condition with no reason to demolish.
- 88 The driveway is, in the view of the Court, consistent with driveways in the area and appears in good condition with no evidence to the contrary.
- 89 The condition is deleted.

### *F.3 – Certification of Electric Vehicle Charging System*

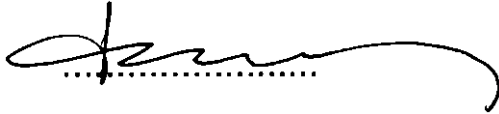
- 90 The Respondent proposes a condition requiring appropriate certification that provision for electric vehicle charging is installed in accordance with the construction certificate plans and specifications that are set out in Condition C.6.
- 91 Condition C.6 requires, in summary, preparation of an electrical plan that includes details and specifications for an electric vehicle charging point prior to the issue of the Construction certificate.
- 92 The Applicant does not contest Condition C.6 but asserts there is still uncertainty as to whether electrical or hydrogen-powered vehicles will prevail in the future, and so such certification is unreasonable.
- 93 I consider Condition F.3 to be a reasonable and uncontroversial consequence of Condition C.6. It is common for electrical circuitry to be certified for the use it is intended to serve, and the Respondent's preferred form of Condition F.3 is adopted.

### **Orders**

- 94 The Court orders that:

- (1) The appeal is upheld.
- (2) Development application No DA 304/2022/1 for the demolition of the existing dwelling and construction of a new dwelling, swimming pool and associated landscaping, at 48 Kings Road, Vacluse (legally known as Lot 93 in DP 10127) is determined by the grant of consent, subject to conditions of consent at Annexure A.
- (3) All exhibits are returned, except for Exhibit B, G and 3.

I certify that this and the preceding 17 pages are a true copy of my reasons for judgment.

A handwritten signature in black ink, appearing to be 'T Horton', written over a dotted line.

**T Horton**

**Commissioner of the Court**

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## Annexure A

### DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

**Development Application No:** DA 304/2022/1

**Development:** Demolition of existing dwelling and construction of new dwelling, swimming pool and associated landscaping.

**Site:** 48 Kings Road, Vaucluse NSW 2030

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

**Date of determination:** 29 March 2023

**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 48 Kings Road, Vaucluse NSW 2030.

The conditions of consent are as follows:

**Respondent's Without-Prejudice Conditions with Applicant Mark-up – DA  
304/2022/1 – 48 Kings Road Vaucluse**

**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

**Applicant** means the applicant for this consent.

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

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

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

**Council** means Woollahra Municipal Council

**Court** means the Land and Environment Court

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

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

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

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

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

**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.

**Site** means the land being developed subject to this consent.

**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, piling, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or
- the occupation of the *site* by any person unless authorised by an occupation certificate.

**Note Interpretation of conditions** - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council

Standard Condition A2 (Autotext AA2)

### A.3 Approved Plans and Supporting Documents

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

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
DA1101	Architectural Drawings (All revision H)	BJB Architects	8/3/2023
DA1102			
DA1103			
DA1104			
DA1105			
DA1201			

DA1202			
DA1203			
DA1204			
DA1301			
DA1302			
DA1303			
DA1304			
DA1305			
DA1306			
DA1601			
LPDA 23 – 006 Pages 1 – 4 (Rev.C)	Landscape Plans	Concept Landscape Architects	21/7/2022
G22339-1-Rev B	Geotechnical Report	Geotechnical Consultants Australia P/L	24 Nov 2022
D22194 SW01-Rev E SW02-Rev E SW03-Rev E SW04-Rev E SW05-Rev E SW06-Rev E SW07-Rev E	Stormwater Management Plans	AE Consulting Engineers	23/01/2023
1320394S_04	BASIX Certificate	NSW Department of Planning, Industry & Environment	14/03/2023

**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)

#### A.4 Ancillary Aspects of Development (section 4.17(2) of the Act)

The Owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012) unless expressly provided otherwise by these conditions at the Owner's expense.

**Note** This condition does not affect the Principal Contractor's or any sub-contractors obligations to protect and preserve public infrastructure from damage or affect their liability for any damage that occurs.

Standard Condition A8 (Autotext AA8)

#### A.5 No Underpinning works

This development consent does NOT give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties and Council's property.

#### A.6 Tree Preservation & Approved Landscaping Works

All landscape works shall be undertaken in accordance with the approved landscape plan, arborist report, tree management plan and transplant method statement as applicable.

## a) The following trees shall be retained

- Trees on Council Land

Council Ref No.	Species	Location	Dimension (metres)	Tree Value
1	Lagunaria patersonia	Street tree	6 x 6	\$5000

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

## b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (metres)
2	Agonis flexuosa	Front Yard – north-east corner	7 x 6
3	Callistemon viminalis	Front Yard – northern boundary	8 x 5
4	Strelitzia nicolai	Front Yard - north-easter corner of the existing building	7 x 3

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

**Note:** The species marked (\*) is exempt from the WMC DCP 2015 and can be removed without requiring consent from Council

## B. CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE DEMOLITION OF ANY BUILDING OR CONSTRUCTION

### B.1 Construction Certificate Required Prior to Any Demolition

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 6.6 of the *Act*.

In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a Principal Certifier, and Notice of Commencement under the *Act*

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

Standard Condition B1 (Autotext BB1)

### B.2 Identification of Hazardous Material

In accordance with Australian Standard AS2601. *The Demolition of Structures*, the Owner shall identify all hazardous substances located on the site including asbestos, polychlorinated biphenyls (PCBs), lead paint, underground storage tanks, chemicals, etc. per clause 1 6.1 of the Standard.

In this regard, **prior to the commencement of any work**, Council shall be provided with a written report prepared by a suitably qualified competent person detailing:

- all hazardous materials identified on the site,
- the specific location of all hazardous materials identified,



- whether the hazardous materials are to be removed from the site as part of the works to be undertaken, and
- safety measures to be put in place.

**Note** This condition is imposed to protect the health and safety of all persons while works are being undertaken and to ensure all safety measures have been identified and are in place to protect all parties in the immediate vicinity of the site.

Standard Condition B6

### B.3 Public Road Assets Prior to Any Work/Demolition

To clarify the condition of the existing public infrastructure prior to the commencement of any development (including prior to any demolition), the Applicant or Owner must submit to Council a full record of the condition of the public road infrastructure adjacent to the development site.

The report must be submitted to Council **prior to the commencement of any work** and include photographs showing current condition and any existing damage fronting and adjoining the site to the:

- road pavement,
- kerb and gutter,
- footway including footpath pavement and driveways,
- retaining walls within the footway or road, and
- drainage structures/pits.

The reports are to be supplied in both paper copy and electronic format in Word. Photographs are to be in colour, digital and date stamped.

If the required report is not submitted then Council will assume there was no damage to any infrastructure in the immediate vicinity of the site prior to the commencement of any work under this consent.

**Note:** If the Applicant or Owner fails to submit the asset condition report required by this condition and damage is occasioned to public assets adjoining the site, Council will deduct from security any costs associated with remedying, repairing or replacing damaged public infrastructure. Nothing in this condition prevents Council making any claim against security held for this purpose.

Standard Condition B7

### B.4 Establishment of Tree Protection Zone (TPZ) Fence

Tree Protection Zones shall be established around all trees to be retained and in accordance with Section 4 of the *Australian Standard Protection of Trees on Development Sites* (AS 4970- 2009). Tree protection zones must also comply with the following requirements;

#### a) Tree Protection Zone areas

Council Ref No.	Species	Tree Location	Fence Radius from Centre of Trunk (Metres)
1	Lagunaria patersonia	Street tree	2m

**Note:** Where this condition relates to street trees and the fence cannot be placed at the specified radius, the fencing shall be positioned so that the entire verge (nature strip)

area in front of the subject property, excluding existing driveways, footpaths and bus stops is protected

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

- b) Tree Protection Zones shall be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence shall be established prior to any materials being brought onto the site and before the commencement of works including demolition. The area within the fence shall be mulched and maintained to a depth of 75mm. The soil within the TPZ shall be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there shall be no access within the TPZ.
- c) A sign identifying the Tree Protection Zone shall be erected on each side of the protection fence indicating the existence of a TPZ. Signage must be visible from within the development site.
- d) No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones, unless specified in this consent.
- e) Temporary access within the TPZ for pedestrian and machinery movements shall only be permitted with the approval of the site arborist or unless specified in this consent.
- f) The site supervisor must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman
- g) The project arborist shall provide written certification of compliance with the above condition.

#### B.5 Permissible work within Tree Protection Zones

The following works are permissible within the Tree Protection Zone:

Council Ref No.	Species	Radius from Trunk (metres)	Approved works
1	Lagunaria patersonia	4m	Installation of stormwater pipe

The project arborist shall provide written certification of compliance with the above condition.

#### B.6 Demolition and Construction Management Plan

The Demolition and Construction Management Plan shall be reviewed and certified by the Project Arborist that appropriate tree protection measures have been accounted for. The Demolition and Construction Management Plan shall be prepared in accordance with all tree protection measures specified within this consent. Considerations by the Project Arborist shall include but not be limited to:

- a) Drawings and method statement showing details and the location of hoarding and scaffold and any pruning required to accommodate the hoarding and scaffolding,
- b) The movement and positioning of heavy machinery, lifting cranes, pier drilling gantry etc;
- c) Site construction access, temporary crossings and movement corridors on the site defined;
- d) Contractors car parking;
- e) Phasing of construction works;
- f) The space needed for all foundation excavations and construction works;
- g) All changes in ground level,
- h) Space for site sheds and other temporary structures such as toilets;
- i) Space for sorting and storing materials (short or long term), spoil and fuel and the mixing of cement and concrete; and
- j) The effects of slope on the movement of potentially harmful liquid spillages towards or into tree protection areas.

### B.7 Arborists Documentation and Compliance Checklist

The site arborist shall provide written certification that all tree protection measures and construction techniques relevant to this consent have been complied with. Documentation for each site visit shall include

- A record of the condition of trees to be retained prior to and throughout development
- Recommended actions to improve site conditions and rectification of non-compliance
- Recommendations for future works which may impact the trees

All compliance certification documents shall be kept on site by the Site Foreman.

As a minimum the following intervals of site inspections must be made:

Stage of arboricultural inspection and supervision	Compliance documentation and photos shall be included
Prior to the demolition of any building or construction and prior to the commencement of any development work	<ul style="list-style-type: none"> <li>• Project Arborist to hold pre construction site meeting with the principal contractor to discuss methods and importance of tree protection measures and resolve any issues in relation to feasibility of tree protection requirements that may arise. Project Arborist to mark all trees approved for removal under DA consent.</li> <li>• The project arborist shall install or supervise the installation of tree protection fencing, trunk protection, ground protection and traffic height control beam</li> </ul>
During any development work	<ul style="list-style-type: none"> <li>• The project arborist shall supervise all demolition and excavation works within the Tree Protection Zones or</li> </ul>

	<p>specified distances of nominated trees listed in this consent.</p> <ul style="list-style-type: none"> <li>The project arborist shall supervise the installation of the stormwater pipe within the TPZ of Tree 1, documenting the condition of roots and soil.</li> <li>Project Arborist to approve relocation of tree protection for landscaping All landscaping works within the TPZ of trees to be retained are to be undertaken in consultation with the project Arborist to minimise the impact to trees.</li> </ul>
Prior to any occupation or use of the building	<ul style="list-style-type: none"> <li>Ensure all trees conditioned to be planted as part of this consent have been planted in accordance with the details prescribed in this consent.</li> </ul>
Prior to the issue of a Final Occupation Certificate	<ul style="list-style-type: none"> <li>The project arborist shall supervise the dismantling of tree protection measures</li> <li>After all demolition, construction and landscaping works are complete the project Arborist shall assess that the subject trees have been retained in the same condition and vigour. If changes to condition are identified the project Arborist should provide recommendations for remediation.</li> </ul>

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

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

## C. CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF ANY CONSTRUCTION CERTIFICATE

### C.1 Modification of Details of the Development (section 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 clause 139 of the *Regulation*, must detail the following amendments.

- a) deleted
- b) deleted
- c) The radius of the south-west corner of the rear terrace at first floor level is to be increased to a radius of **1300mm**.

- d) The landscape plan is to be amended to detail planting along the northern boundary of a species that attains a minimum mature height of 4m in order to provide privacy to the rear of the properties addressed to 56 Kings Rd and 18 Princes Avenue

**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:** Clause 146 of the *Regulation* prohibits the issue of any Construction Certificate subject to this condition unless the Certifying Authority is satisfied that the condition has been complied with

**Note:** Clause 145 of the *Regulation* prohibits the issue of any Construction Certificate that is inconsistent with this consent

Standard Condition C4 (Autotext CC4)

## C.2 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.

Description	Amount	Indexed	Council Fee Code
<b>LONG SERVICE LEVY</b> under <i>Building and Construction Industry Long Service Payments Act 1986</i>			
<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 <i>Environmental Planning and Assessment Act 1979</i>			
Property Damage Security Deposit (\$138)	\$67,145.00	No	T115
<b>Tree Damage Security Deposit</b> – making good any damage caused to any public tree	\$5,000 00	No	T114
<b>DEVELOPMENT LEVY</b> under Woollahra Section 7.12 Development Contributions Plan 2021 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)	\$26,641.83 + Index Amount	Yes, quarterly	T96
<b>INSPECTION FEES</b> under section 608 of the <i>Local Government Act 1993</i>			
Public Tree Management Inspection Fee	\$221.34	No	T45
Public Road and Footpath Infrastructure Inspection Fee (\$138 Fee)	\$615 00	No	T45
Security Administration Fee	\$190 00	No	T16
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>	\$99,813 17 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 3.13 of the Woollahra Section 7.12 Development Contributions Plan 2021 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 2021**

Where the Applicant makes a written request supported by reasons for payment of the section 7.12 levy other than as required by clause 3.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

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

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

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

Any deferred or periodic payment of the section 7.12 levy will be adjusted in accordance with clause 3.13 of the Plan. The Applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

Standard Condition C5

### C.3 BASIX Commitments

The Applicant must submit to the Certifying Authority the approved BASIX Certificate 1320394S\_04 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 must be shown on the Construction Certificate plans and specifications prior to the issue of any Construction Certificate.

**Note** Clause 145(1)(a1) of the *Environmental Planning and Assessment Regulation 2000* provides. "A certifying authority must not issue a Construction Certificate for building work unless it is satisfied of the following matters (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires"

Standard Condition C7

### C.4 Soil and Water Management Plan – Submission and Approval

The Principal Contractor or Owner-builder must submit to the Certifying Authority a soil and water management plan complying with.

- a) "*Do it Right On Site, Soil and Water Management for the Construction Industry*" published by the Southern Sydney Regional Organisation of Councils, 2001, and
- b) "*Managing Urban Stormwater - Soils and Construction*" 2004 published by the NSW Government (*The Blue Book*).

Where there is any conflict *The Blue Book* takes precedence.

The Certifying Authority must be satisfied that the soil and water management plan complies with the publications above prior to issuing any Construction Certificate.

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



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

**Note** The “*Do it Right On Site, Soil and Water Management for the Construction Industry*” publication can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au), and *The Blue Book* is available at [www.environment.nsw.gov.au/stormwater/publications.htm](http://www.environment.nsw.gov.au/stormwater/publications.htm).

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

Standard Condition C25

## C.5 Professional Engineering Details

The Construction Certificate plans and specifications clause 7 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, must include detailed professional engineering plans and/or specifications for all structural, electrical, hydraulic, hydrogeological, geotechnical, mechanical and civil work complying with this consent, approved plans, the statement of environmental effects and supporting documentation.

Detailed professional engineering plans and/or specifications must be submitted to the Certifying Authority with the application for any Construction Certificate.

**Note:** This does not affect the right of the developer to seek staged Construction Certificates.

Standard Condition C36

## C.6 Electric vehicle circuitry and electric vehicle charging point requirements

An accurate electrical plan of all off-street car parking spaces must be prepared by a suitably qualified person and it must include details and specifications to illustrate how the off-street car parking spaces will be constructed with the capacity to install at a minimum, a ‘Level 2’ (single phase, 7Kw power) electric vehicle charger point. This plan must be submitted to the certifier, prior to the issue of the construction certificate.

Standard Condition C58 (Autotext CC58)

## C.7 Swimming and Spa Pools – Child Resistant Barriers

The Construction Certificate plans and specifications required by clause 139 of the *Regulation* must demonstrate compliance (by showing the proposed location of all child-resistant barriers and the resuscitation sign) with the provisions of the *Swimming Pools Act 1992* and the Building Code of Australia.

Approval is not granted for the modification of any boundary fencing beyond what is authorised by the stamped approved plans, as modified by any condition of consent or what is permitted to be carried out as ‘exempt development’ pursuant to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

**Note** A statement to the effect that isolation swimming pool fencing complying with AS1926 will be installed does not satisfy this condition. The location of the required barriers and the sign must be detailed upon the *Construction Certificate* plans.

Standard Condition C55 (Autotext CC55)

## C.8 Swimming and Spa Pools – Backwash

The Construction Certificate plans and specification required to be submitted pursuant to clause 139 of the *Regulation* must detail the connection of backwash to Sydney Waters sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

**Note** The plans must show the location of Sydney Water's sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with clause 10.9 (Figure 10.2) of AS/NZS 3500 2.2:1996.

**Note** The discharge of backwash water to any stormwater system is water pollution and an offence under the *Protection of the Environment Operations Act 1997*. The connection of any backwash pipe to any stormwater system is an offence under the *Protection of the Environment Operations Act 1997*.

Standard Condition C56 (Autotext CC56)

### C.9 Acoustic Certification of Mechanical Plant and Equipment

The Construction Certificate plans and specification required to be submitted pursuant to clause 139 of the *Regulation* must be accompanied by a certificate from a professional engineer (acoustic engineer) certifying that the noise level measured at any boundary of the site at any time while the proposed mechanical plant and equipment is operating will not exceed 5dB(A) above the *background noise level*, when measured at the southern boundary of the site.

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

Where sound attenuation is required this must be detailed.

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

**1. Australian Acoustical Society**—professional society of noise-related professionals  
[www.acoustics.asn.au](http://www.acoustics.asn.au)

**2. Association of Australian Acoustical Consultants**—professional society of noise related professionals [www.aaac.org.au](http://www.aaac.org.au)

Standard Condition C62 (Autotext CC62)

### C.10 Road and Public Domain Works

deleted

### C.11 Geotechnical and Hydrogeological Design, Certification and Monitoring

The Construction Certificate plans and specification required to be submitted to the Certifying Authority pursuant to clause 139 of the *Regulation* must be accompanied by a Geotechnical / Hydrogeological Monitoring Program together with civil and structural engineering details for foundation retaining walls, footings, basement tanking, and subsoil drainage systems, as applicable, prepared by a professional engineer, who is suitably qualified and experienced in geotechnical and hydrogeological engineering.

These details must be certified by the professional engineer to:

- Provide appropriate support and retention to ensure there will be no ground settlement or movement, during excavation or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure.
- Provide appropriate support and retention to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology (behaviour of groundwater).
- Provide foundation tanking prior to excavation such that any temporary changes to the groundwater level, during construction, will be kept within the historical range

of natural groundwater fluctuations. Where the historical range of natural groundwater fluctuations is unknown, the design must demonstrate that changes in the level of the natural water table, due to construction, will not exceed 0.3m at any time

- d) Provide tanking of all below ground structures to prevent the entry of all ground water/seepage water such that they are fully tanked and no subsoil drainage/seepage water is discharged to the street kerb to comply with Council's DCP
- e) Provide a Geotechnical and Hydrogeological Monitoring Program that
  - will detect any settlement associated with temporary and permanent works and structures,
  - will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like),
  - will detect vibration in accordance with AS 2187 2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity),
  - will detect groundwater changes calibrated against natural groundwater variations,
  - details the location and type of monitoring systems to be utilised,
  - details the pre-set acceptable limits for peak particle velocity and ground water fluctuations,
  - details recommended hold points to allow for the inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and
  - details a contingency plan

standard Condition C40 (Autotext: CC40)

## C.12 Ground Anchors

This development consent does NOT give approval to works or structures over, on or under adjoining properties, public roads and/or footpaths. Prior written consent must be obtained from all relevant adjoining property owner(s) for the use of any Ground Anchors extending beyond the boundaries of the subject property.

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

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

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

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

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

Standard Condition C41 (Autotext: CC41)

### C.13 Vehicular Access and Parking Arrangement

Prior to issue of the Construction Certificate, Construction Certificate plans and specifications required by clause 139 of the *Regulation*, must include detailed architectural plans and specifications showing the following

- a) Dimensions of all parking spaces shall be clearly depicted on the drawings demonstrating showing compliance with AS2890 1,
- b) Pursuant to Clause 3 2 4 of AS2890 1, a 2m x 2 5m pedestrian sight splay, clear of any obstructions to visibility, shall be provided on both sides of the driveway exit These sight splays shall be clearly depicted on the drawings showing compliance with this requirement

**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** Clause 146 of the *Regulation* prohibits the issue of any Construction Certificate subject to this condition unless the Certifying Authority is satisfied that the condition has been complied with

**Note** Clause 145 of the *Regulation* prohibits the issue of any Construction Certificate that is inconsistent with this consent

Standard Condition C45 (Autotext CC45)

### C.14 Stormwater Management Plan

Prior to issue of the Construction Certificate, the applicant must submit, for approval by the Certifying Authority, detailed stormwater management plans prepared by a suitably qualified and experienced civil engineer, which include the following

- a) General design in accordance with stormwater management plans, referenced D22194-Rev E, prepared by AE Consulting Engineers, dated 23/01/2023, other than amended by this and other conditions,
- b) All below ground structures are to be fully tanked Subsoil drainage/seepage water is NOT to be collected and discharged to the kerb and gutter to comply with Chapter E2 2 5 of Council's DCP Notation to this requirement shall be clearly depicted on the drawings,
- c) The installation of an on-site detention (OSD) system with a minimum storage of 9 5m<sup>3</sup> Surface runoff from all paved areas shall be directed to the proposed OSD system Provision of a high early discharge chamber shall be removed for the OSD system
- d) The installation of a rainwater retention and reuse system (RWT) with minimum storage volume of 36 8m<sup>3</sup> Runoff from all roof areas shall be directed to the proposed RWT for non-potable uses such as toilet flushing, laundry device, pool top-up, car washing and garden irrigations etc Notation to this requirement must be clearly depicted on the drawings Overflow from the RWT shall be directed to the OSD system by gravity,
- e) The installation of a basement pumpout system with minimum storage volume of 4 2m<sup>3</sup> to comply with Council's DCP and AS3500 3, Runoff shall be pumped to the proposed OSD system,
- f) A maximum total site discharge of 20 l/s will be permitted to comply with Council's DCP Stormwater runoff from the site shall be discharged to the street kerb located within the frontage of the site
- g) Only one stormwater outlet pipe across the Council's property will be permitted to comply with Council's DCP The proposed stormwater pipe across the Council's property must have a minimum grade of 1% to comply with Council's DCP and AS3500 3,
- h) Dimensions of all drainage pit and access grates must comply with AS3500,

- i) Compliance the objectives and performance requirements of the BCA, and
- j) General compliance with the Council's Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

The *Stormwater Management Plan* must also include the following specific requirements:

**Layout plan**

A detailed drainage plan at a scale of 1:100 based on drainage calculations prepared in accordance with the Australian Government publication, *Australian Rainfall and Run-off*, 2019 edition or most current version thereof. It must include:

- a) All pipe layouts, dimensions, grades, lengths and material specification,
- b) Location of proposed rainwater tanks,
- c) All invert levels reduced to Australian Height Datum (AHD),
- d) Location and dimensions of all drainage pits,
- e) Point and method of connection to Councils drainage infrastructure, and
- f) Overland flow paths over impervious areas.

**On-site Detention (OSD) details:**

- a) Any potential conflict between existing and proposed trees and vegetation,
- b) Internal dimensions and volume of the proposed detention storage,
- c) Diameter of the outlet to the proposed detention storage basin,
- d) Plans, elevations and sections showing the detention storage basin invert level, centre-line level of outlet, top water level, finished surface level and adjacent structures,
- e) Details of access and maintenance facilities,
- f) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary products,
- g) Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the on-site detention system,
- h) Non-removable fixing details for orifice plates where used,

**Rainwater Reuse System details**

- a) Any potential conflict between existing and proposed trees and vegetation,
- b) Internal dimensions and volume of the proposed rainwater storage,
- c) Plans, elevations and sections showing the rainwater tanks, finished surface level and adjacent structures,
- d) Details of access and maintenance facilities,
- e) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary first flush products,
- f) Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the rainwater tanks,

Where any new Stormwater Drainage System crosses the footpath area within any road, separate approval under section 138 of the *Roads Act 1993* must be obtained from Council for those works prior to the issue of any Construction Certificate.

All Stormwater Drainage System work within any road or public place must comply with Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012).

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

**Note:** The collection, storage and use of rainwater is to be in accordance with *Standards Australia HB230-2008 "Rainwater Tank Design and Installation Handbook"*  
Standard Condition C 51

### C.15 Tree Management Plan

The *Construction Certificate* plans and specifications shall show the following information:

- a) Trees to be numbered in accordance with these conditions:
  - shaded green where required to be retained and protected
  - shaded red where authorised to be removed
  - shaded yellow where required to be transplanted
  - shaded blue where required to be pruned
- b) References to applicable tree management plan, arborists report or transplant method statement

This plan shall be kept on site until the issue of the final occupation certificate.

## D. CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT WORK

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

For the purposes of section 4 17(11) of the *Act*, the following conditions are prescribed in relation to a development consent for development that involves any building work:

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

This condition does not apply:

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

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

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

**Note** All new guttering is to comply with the provisions of Part 3 5 2 of the Building Code of Australia  
Standard Condition D1 (Autotext DD1)

### D.2 Adjoining Buildings Founded on Loose Foundation Materials



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

**Note** A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be held responsible for any damages arising from the removal of any support to supported land as defined by section 177 of the *Conveyancing Act 1919*  
Standard Condition D6 (Autotext DD6)

### D.3 Piezometers for the Monitoring of Ground Water Levels

The Principal Contractor must be provide 2 piezometers within the excavation area and a further 2 piezometers around the perimeter of the wall. The piezometers are to be installed to monitor ground water levels (GWL) before and during all dewatering works for the construction phase.

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

The GWL are to be regularly monitored during the course of the works as required by the work method statement for the control of GWL. Any damaged piezometers are to be replaced to allow uninterrupted monitoring.

Where there are any movements in the GWL outside a safe range set by the work method statement for the control of GWL, corrective action must be undertaken under the direction of the professional engineer (hydrological/geotechnical engineer)

Standard Condition D7

### D.4 Works (Construction) Zone – Approval and Implementation

A Works Zone may be required for this development. The Principal Contractor or Owner can apply for a works zone. If the works zone is approved the Principal Contractor or Owner must pay all fees for this Works Zone before it can be installed.

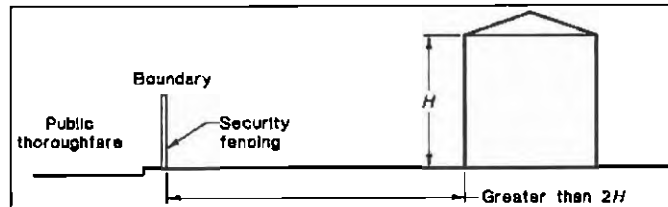
The Principal Contractor must pay all fees associated with the application and occupation and use of the road as a Works Zone. All Works Zone signs must have been erected by Council to permit enforcement of the Works Zone by Council's Rangers and NSW Police before commencement of any work. Signs are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

**Note** The Principal Contractor or Owner must allow not less than four to six weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the clause 22 of the *Transport Administration (General) Regulation 2000* to exercise those functions delegated by the Roads and Maritime Services under section 50 of the *Transport Administration Act 1988*

**Note:** The enforcement of the works zone is at the discretion of Council's Rangers and the NSW Police Service. The Principal Contractor must report any breach of the works zone to either Council or the NSW Police Service  
Standard Condition D10 (Autotext DD10)

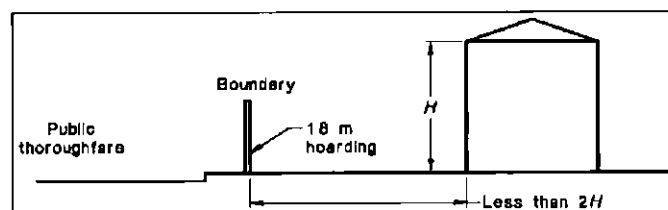
## D.5 Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection

Security fencing must be provided around the perimeter of the development site, including any additional precautionary measures taken to prevent unauthorised entry to the site at all times during the demolition, excavation and construction period. Security fencing must be the equivalent 1.8m high chain wire as specified in AS 1725.



### Type A Hoarding

Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless the least horizontal distance between the common boundary and the nearest parts of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.



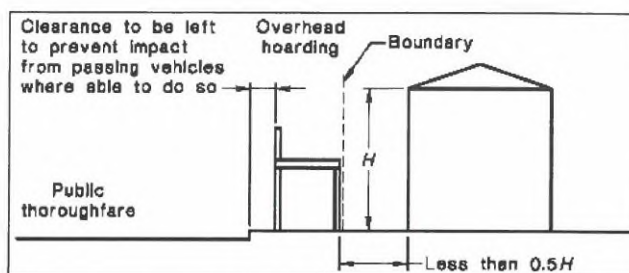
### Type B Hoarding

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

- the vertical height above footpath level of the structure being demolished is less than 4.0m, or
- the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must:

- extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary,
- have a clear height above the footpath of not less than 2.1m,
- terminate 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface, and
- together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa.



The Principal Contractor or Owner-builder must ensure that overhead protective structures are installed and maintained in accordance with the NSW “Code of Practice - Overhead Protective Structures 1995”. This is code available at [www.safework.nsw.gov.au/\\_data/assets/pdf\\_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf](http://www.safework.nsw.gov.au/_data/assets/pdf_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf)

### All Hoardings

Security fencing, hoarding and overhead protective structure must not obstruct access to utilities services including but not limited to man holes, pits, stop valves, fire hydrants or the like.

### Hoardings on Public Land including ‘Creative Hoardings’

The Principal Contractor or Owner-builder must pay all fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

A creative hoarding (i.e. an approved artwork or historic image affixed to the hoarding) is required if the hoarding meets the criteria in Council’s Creative Hoardings Policy (adopted March 2020). The cost of printing and affixing the creative hoarding is the responsibility of the Principal Contractor or Owner-builder. The Creative Hoardings Policy can be downloaded from Council’s website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)

**Note** The Principal Contractor or Owner must allow not less than two (2) weeks from the date of making a hoarding application for determination. Any approval for a hoarding or overhead protection under the *Roads Act 1993* will be subject to its own conditions and fees

**Note** Council seeks to increase public art in the public domain by requiring artwork or historic images on hoardings located on public land. Under the Creative Hoardings Policy an application for a hoarding proposed on public land will require an approved artwork or historic image affixed to the hoarding if the hoarding meets the criteria in section 3 of the Policy

- A. Hoardings proposed on land zoned B2 Local Centre, or B4 Mixed Use, or SP2 Infrastructure under Woollahra Local Environmental Plan 2014 AND erected for 8 weeks or more  
OR
- B. Hoardings proposed on land located along a State classified road (regardless of the zone) AND erected for 8 weeks or more  
OR
- C. Hoardings proposed in any other location than that referred to in A. and B. above AND erected for 12 weeks or more, except where
  - i. the capital investment value of the work to which the hoarding relates is less than \$1 million  
OR
  - ii. the land is zoned R2 Low Density Residential  
OR

- iii the land is zoned R3 Medium Density Residential and the hoarding located in a lane or street that does not have through traffic (eg a cul-de-sac or no through road)

Artwork and historic images for the hoardings are assessed and approved in accordance with the Creative Hoardings Policy. Details of the artwork or images proposed to be affixed to the hoardings must be submitted with Council's form "Application for a permit to use a footpath for the erection of a hoarding/scaffolding".

The Creative Hoardings Policy can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or for more information contact Council's Cultural Development Team.  
Standard Condition D11 (Autotext DD11)

## D.6 Site Signs

The Principal Contractor or Owner-builder must ensure that the sign/s required by clauses 98A and 227A of the *Regulation* is/are erected and maintained at all times.

Clause 98A of the *Regulation* provides

### **Erection of signs**

- For the purposes of section 4 17(11) of the *Act*, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - a showing the name, address and telephone number of the Principal Certifier for the work, and
  - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - c stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- This clause does not apply in relation to Crown building work that is certified, in accordance with section 6 28 of the *Act*, to comply with the Building Code of Australia

Clause 227A of the *Regulation* provides

### **Signs on development sites**

If there is a person who is the Principal Certifier or the Principal Contractor for any building work, subdivision work or demolition work authorised to be carried out on a site by a development consent or complying development certificate:

- Each such person MUST ensure that a rigid and durable sign showing the person's identifying particulars so that they can be read easily by anyone in any public road or other public place adjacent to the site is erected in a prominent position on the site before the commencement of work, and is maintained on the site at all times while this clause applies until the work has been carried out

**Note** Clause 227A imposes a penalty exceeding \$1,000 if these requirements are not complied with

**Note** If Council is appointed as the Principal Certifier it will provide the sign to the Principal Contractor or Owner-builder who must ensure that the sign is erected and maintained as required by clause 98A and clause 227A of the *Regulation*.

Standard Condition D12 (Autotext DD12)

## D.7 Toilet Facilities



Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site

Each toilet provided:

- a) must be a standard flushing toilet, and
- b) must be connected to a public sewer, or
- c) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or
- d) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.

In this condition

**accredited sewage management facility** means a sewage management facility to which Division 4A of Part 3 of the *Local Government (Approvals) Regulation 1993* applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in clause 95B of the *Local Government (Approvals) Regulation 1993*

**approved by the Council** means the subject of an approval in force under Division 1 of Part 3 of the *Local Government (Approvals) Regulation 1993*

**public sewer** has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*

**sewage management facility** has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*

**Note** This condition does not set aside the requirement to comply with SafeWork NSW requirements.

Standard Condition: D13 (Autotext DD13)

## D.8 Erosion and Sediment Controls – Installation

The Principal Contractor or Owner-builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- a) The Soil and Water Management Plan if required under this consent;
- b) “Do it Right On Site, Soil and Water Management for the Construction Industry” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- c) “Managing Urban Stormwater - Soils and Construction” 2004 published by the NSW Government (*The Blue Book*).

Where there is any conflict *The Blue Book* takes precedence.

**Note** The International Erosion Control Association – Australasia ([www.austieca.com.au/](http://www.austieca.com.au/)) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia

**Note** The “Do it Right On Site, Soil and Water Management for the Construction Industry” publication can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) and *The Blue Book* is available at [www.environment.nsw.gov.au/stormwater/publications.htm](http://www.environment.nsw.gov.au/stormwater/publications.htm)

**Note** A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the *Act* and/or the *Protection of the Environment Operations Act 1997* **without any further warning**. It is a criminal offence to cause, permit or allow pollution

**Note** Section 257 of the *Protection of the Environment Operations Act 1997* provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”

**Warning** Irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of their occupation of the land being developed  
Standard Condition D14 (Autotext DD14)

#### **D.9 Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)**

The erection of the building in accordance with this development consent must not be commenced until:

- a) A Construction Certificate for the building work has been issued by the consent authority, the Council (if the Council is not the consent authority) or an accredited Certifier, and
- b) The person having the benefit of the development consent has:
  - appointed a Principal Certifier for the building work, and
  - notified the Principal Certifier that the person will carry out the building work as an Owner-builder, if that is the case, and
- c) The Principal Certifier has, no later than 2 days before the building work commences:
  - notified the consent authority and the Council (if the Council is not the consent authority) of his or her appointment, and
  - notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- d) The person having the benefit of the development consent, if not carrying out the work as an Owner-builder, has:
  - appointed a Principal Contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
  - notified the Principal Certifier of any such appointment, and
  - unless that person is the Principal Contractor, notified the Principal Contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - given at least 2 days' notice to the Council of the person's intention to commence the erection of the building.

**Note:** *building* has the same meaning as in section 14 of the *Act* and includes part of a building and any structure or part of a structure

**Note.** *new building* has the same meaning as in section 6.1 of the *Act* and includes an altered portion of, or an extension to, an existing building

**Note** The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 66(2) of the *Act* (including the need for a Construction Certificate) prior to any demolition work. See: *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.

**Note** Construction Certificate Application, PC Service Agreement and Notice of Commencement forms can be downloaded from Council's website  
[www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)

**Note** It is an offence for any person to carry out the erection of a *building* in breach of this condition and in breach of section 66(2) of the *Act*  
Standard Condition D15 (Autotext DD15)



**D.10 Notification of Home Building Act 1989 requirements**

- 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:
  - In the case of work for which a Principal Contractor is required to be appointed:
    - the name and licence number of the Principal Contractor, and
    - the name of the insurer by which the work is insured under Part 6 of that Act,
  - In the case of work to be done by an Owner-builder:
    - the name of the Owner-builder, and
    - if the Owner-builder is required to hold an Owner-builder permit under that Act, the number of the Owner-builder permit.
- c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the Principal Certifier 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 Building Code of Australia.

Standard Condition D17 (Autotext DD17)

**D.11 Dilapidation Reports for existing buildings**

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

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

No. 52, 54 & 56 Princes Avenue

No 46 Kings Road

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

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

**Note:** The reasons for this condition are

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

Also refer to the Dilapidation Report Advising for more information regarding this condition  
Standard Condition D4

## **E. CONDITIONS WHICH MUST BE SATISFIED DURING ANY DEVELOPMENT WORK**

### **E.1 Compliance with BCA and Insurance Requirements under the Home Building Act 1989**

For the purposes of section 4.17(11) of the *Act*, the following condition is prescribed in relation to a development consent for development that involves any building work:

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

This condition does not apply:

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

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

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

Standard Condition E1 (Autotext EE1)

### **E.2 Compliance with Australian Standard for Demolition**

Demolition of buildings and structures must comply with Australian Standard AS 2601—2001. *The Demolition of Structures*.

Standard Condition E2 (Autotext EE2)

### **E.3 Requirement to Notify about New Evidence**

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

Standard Condition E4 (Autotext EE4)

### **E.4 Critical Stage Inspections**

Critical stage inspections must be called for by the Principal Contractor or Owner-builder as required by the Principal Certifier, any PC service agreement, the *Act* and the *Regulation*.

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

*Critical stage inspections* means the inspections prescribed by the *Regulations* for the purposes of section 6.5 of the *Act* or as required by the Principal Certifier and any PC Service Agreement.

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

**Note** The PC may, in addition to inspections, require the submission of Compliance Certificates, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.  
Standard Condition E5 (Autotext EE5)

## E.5 Hours of Work –Amenity of the Neighbourhood

- a) No work must take place on any Sunday or public holiday.
- b) No work must take place before 7am or after 5pm any weekday.
- c) No work must take place before 7am or after 1pm any Saturday.
- d) The following work **must not** take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday:
  - (i) piling,
  - (ii) piercing,
  - (iii) rock or concrete cutting, boring or drilling,
  - (iv) rock breaking,
  - (v) rock sawing,
  - (vi) jack hammering, or
  - (vii) machine excavation.
- e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- g) No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

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

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

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

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

**Note** Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the *Protection of the Environment Operations Act 1997*, the *Protection of the Environment Operations (Noise Control) Regulation 2017*.

**Note** NSW EPA Noise Guide is available at [www.epa.nsw.gov.au/noise/nglg.htm](http://www.epa.nsw.gov.au/noise/nglg.htm)

Standard Condition E6 (Autotext EE6)

## E.6 Public Footpaths – Safety, Access and Maintenance

The Principal Contractor or Owner-builder and any other person acting with the benefit of this consent must:

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

This condition does not apply to the extent that a permit or approval exists under the section 148B of the *Road Transport Act 2013*, section 138 of the *Roads Act 1993* or section 68 of the *Local Government Act 1993* except that at all time compliance is required with.

- a) Australian Standard AS 1742 (Set): *Manual of uniform traffic control devices* and all relevant parts of this set of standards.
- b) Australian Road Rules.

**Note** Section 73 of the *Road Transport (Safety and Traffic Management) Act 1999* allows the NSW Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose.

**Note** Section 138 of the *Roads Act 1993* provides that a person must not.

- erect a structure or carry out a work in, on or over a public road, or
- dig up or disturb the surface of a public road, or
- remove or interfere with a structure, work or tree on a public road, or
- pump water into a public road from any land adjoining the road, or
- connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

**Note** Section 68 of the *Local Government Act 1993* provides that a person may carry out certain activities only with the prior approval of the Council including.

- Part C Management of waste
  - a For fee or reward, transport waste over or under a public place
  - b Place waste in a public place
  - c. Place a waste storage container in a public place
- Part E Public roads
  - a Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
  - b Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road

Standard Condition E7 (Autotext EE7)

## E.7 Maintenance of Environmental Controls

The Principal Contractor or Owner-builder must ensure that the following monitoring, measures and controls are maintained:

- a) erosion and sediment controls,
- b) dust controls,
- c) dewatering discharges,
- d) noise controls,

- e) vibration monitoring and controls,
  - f) ablutions.
- Standard Condition E11

## E.8 Compliance with Geotechnical / Hydrogeological Monitoring Program

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

The Principal Contractor and any sub-contractor must strictly follow the Geotechnical / Hydrogeological Monitoring Program for the development including, but not limited to:

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

**Note** The consent authority cannot require that the author of the geotechnical/hydrogeological report submitted with the development application to be appointed as the professional engineer supervising the work however, it is the Council's recommendation that the author of the report be retained during the construction stage  
Standard Condition E12 (Autotext EE12)

## E.9 Support of Adjoining Land and Buildings

A person must not do anything on or in relation to the site (the supporting land) that removes the support provided by the supporting land to any other land (the supported land) or building (the supported building).

For the purposes of this condition, supporting land includes the natural surface of the site, the subsoil of the site, any water beneath the site, and any part of the site that has been reclaimed.

**Note** This condition does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is considered necessary upon any adjoining or supported land by any person the Principal Contractor or Owner-builder must obtain:

- a) the consent of the owners of such adjoining or supported land to trespass or encroach, or
- b) an access order under the *Access to Neighbouring Land Act 2000*, or
- c) an easement under section 88K of the *Conveyancing Act 1919*, or
- d) an easement under section 40 of the *Land and Environment Court Act 1979* as appropriate

**Note** Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

**Note** Clause 20 of the *Roads Regulation 2008* prohibits excavation in the vicinity of roads as follows: "**Excavations adjacent to road** - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road." Separate approval is required under the *Roads Act 1993* for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.

**Note** The encroachment of work or the like is a civil matter of trespass or encroachment and Council does not adjudicate or regulate such trespasses or encroachments except in relation to encroachments upon any road, public place, Crown land under Council's care.

control or management, or any community or operational land as defined by the *Local Government Act 1993*.  
Standard Condition E13 (Autotext EE13)

## E.10 Vibration Monitoring

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

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

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

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

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

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

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

**Note** *professional engineer* has the same meaning as in clause A1.1 of the BCA

**Note** *building* has the same meaning as in section 1.4 of the Act i.e. "*building* includes part of a building and any structure or part of a structure"

**Note** *supported land* has the same meaning as in the *Conveyancing Act 1919*  
Standard Condition E14 (Autotext EE14)

## E.11 Erosion and Sediment Controls – Maintenance

The Principal Contractor or Owner-builder must maintain water pollution, erosion and sedimentation controls in accordance with.

- a) the Soil and Water Management Plan required under this consent,



- b) “Do it Right On Site, Soil and Water Management for the Construction Industry” published by the Southern Sydney Regional Organisation of Councils, 2001, and
- c) “Managing Urban Stormwater - Soils and Construction” 2004 published by the NSW Government (*The Blue Book*).

Where there is any conflict *The Blue Book* takes precedence.



**Note.** A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the *Act* and/or the *Protection of the Environment Operations Act 1997* without any further warning. It is a criminal offence to cause, permit or allow pollution

**Note** Section 257 of the *Protection of the Environment Operations Act 1997* provides that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”

**Warning.** Irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution  
Standard Condition E15 (Autotext EE15)

## E.12 Disposal of Site Water During Construction

The Principal Contractor or Owner-builder must ensure.

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

**Note** This condition has been imposed to ensure that adjoining and neighbouring land is not adversely affected by unreasonable overland flows of stormwater and that site water does not concentrate water such that they cause erosion and water pollution.  
Standard Condition E17 (Autotext EE17)

## E.13 Site Cranes

Site crane(s) and hoist(s) may be erected within the boundary of the land being developed subject to compliance with Australian Standards AS 1418, AS 2549 and AS 2550 and all relevant parts to these standards.

Cranes must not swing or hoist over any public place unless the Principal Contractor or Owner-builder have the relevant approval under the *Local Government Act 1993*, *Crown Lands Act 1989* or *Roads Act 1993*.

The crane must not be illuminated outside approved working hours other than in relation to safety beacons required by the Civil Aviation Safety Authority under the *Civil Aviation Act 1988 (Cth)*.

No illuminated sign(s) must be erected upon or displayed upon any site crane.

**Note** Where it is proposed to swing a crane over a public place the Principal Contractor or Owner-builder must make a separate application to Council under section 68 of the *Local Government Act 1993* and obtain activity approval from Council prior to swinging or hoisting over the public place

**Note** Where it is proposed to swing a crane over private land the consent of the owner of that private land is required. Alternatively, the Principal Contractor or Owner-builder must obtain an access order under the *Access to Neighbouring Land Act 2000* or easement under section 88K of the *Conveyancing Act 1919* or section 40 of the *Land and Environment Court Act 1979* as appropriate. The encroachment of cranes or the like is a civil matter of trespass and encroachment. Council does not adjudicate or regulate such trespasses or encroachments.

Standard Condition E19 (Autotext EE19)

#### **E.14 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum**

The Principal Contractor or Owner-builder must ensure that a registered surveyor carries out check surveys and provides survey certificates confirming the location of the building(s), ancillary works, flood protection works and the stormwater drainage system relative to the boundaries of the site and that the height of buildings, ancillary works, flood protection works and the stormwater drainage system relative to Australian Height Datum complies with this consent at the following critical stages.

The Principal Contractor or Owner-builder must ensure that work must not proceed beyond each of the following critical stages until compliance has been demonstrated to the Principal Certifier's satisfaction:

- a) Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level.
- b) Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey.
- c) Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof.
- d) Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structure, flood protection work, swimming pool or spa pool or the like.
- e) Upon the completion of formwork and steel fixing prior to pouring of any concrete for driveways showing transitions and crest thresholds confirming that driveway levels match Council approved driveway crossing levels and minimum flood levels.
- f) Stormwater drainage Systems prior to back filling over pipes confirming location, height and capacity of works.
- g) Flood protection measures are in place confirming location, height and capacity.

**Note** This condition has been imposed to ensure that development occurs in the location and at the height approved under this consent. This is critical to ensure that buildings are constructed to minimum heights for flood protection and maximum heights to protect views and the amenity of neighbours.

Standard Condition E20 (Autotext EE20)

### E.15 Placement and Use of Skip Bins

The Principal Contractor or Owner-builder must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

- a) Activity Approval has been issued by Council under section 68 of the *Local Government Act 1993* to place the waste storage container in a public place; and
- b) where located on the road it is located only in a position where a vehicle may lawfully park in accordance with the Australian Road Rules.

**Note** Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.

Standard Condition E21 (Autotext EE21)

### E.16 Prohibition of Burning

There must be no burning of any waste or other materials. The burning of copper chrome arsenate (CCA) or pentachlorophenol (PCP) treated timber is prohibited in all parts of NSW. All burning is prohibited in the Woollahra local government area.

**Note** Pursuant to the *Protection of the Environment Operations (Clean Air) Regulation 2010* all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.

Standard Condition E22 (Autotext EE22)

### E.17 Dust Mitigation

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

This generally requires:

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

**Note:** "*Dust Control - Do it right on site*" can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or obtained from Council's office.

**Note:** Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au) and [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au). Other specific conditions and advice may apply.

**Note:** Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities.

and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.

Standard Condition E23 (Autotext EE23)

#### **E.18 Swimming and Spa Pools – Temporary Child Resistant Barriers and other Matters**

Temporary child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and Building Code of Australia where any swimming pool or spa pool, as defined by the *Swimming Pools Act 1992*, contains more than 300mm in depth of water at any time.

Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia as soon as practical.

Backwash and any temporary dewatering from any swimming pool or spa pool as defined by the *Swimming Pools Act 1992* must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

**Note** This condition does not prevent Council from issuing an order pursuant to section 23 of the *Swimming Pool Act 1992* or taking such further action as necessary for a breach of this condition or the *Swimming Pools Act 1992*.

Standard Condition E26

#### **E.19 Site Waste Minimisation and Management – Demolition**

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

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

When implementing the SWMMP the Applicant must ensure:

- a) footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval,
- b) any material moved offsite is transported in accordance with the requirements of the *Protection of the Environment Operations Act 1997*,
- c) waste is only transported to a place that can lawfully be used as a waste facility,
- d) generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and
- e) evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.



**Note** Materials that have an existing reuse or recycling market should not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.  
Standard Condition E31 (Autotext EE31)

## E.20 Site Waste Minimisation and Management – Construction

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

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

Standard Condition E32 (Autotext EE32)

## E.21 Asbestos Removal

All asbestos removal work must be carried out safely according to NSW work health and safety legislation.

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

- a) Be undertaken by contractors who hold a current SafeWork NSW "demolition licence" and a current SafeWork NSW "Class A licence" for friable asbestos removal.
- b) Be carried out in accordance with the relevant SafeWork NSW codes of practice.
- c) No asbestos products may be reused on the site
- d) No asbestos laden skip or bins shall be left in any public place.

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

Standard Condition E39

## E.22 Classification of Hazardous Waste

Prior to the exportation of hazardous waste (including hazardous fill or soil) from the site, the waste materials must be classified in accordance with the provision of the *Protection of the Environment Operations Act 1997* and the NSW EPA Waste Classification Guidelines, Part1. *Classifying Waste, 2014*.

**Note:** This condition is imposed to ensure that where hazardous waste will be removed from a site an asbestos licensed contractor can definitively determine where the waste may be legally taken for disposal.  
Standard Condition E40

## E.23 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with the hazardous waste classification condition above must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.

**Note:** This condition is imposed to ensure that asbestos and other hazardous waste is disposed of lawfully under the *Protection of the Environment Operations Act 1997* and relevant NSW EPA requirements.  
Standard Condition E41

## E.24 Asbestos Removal Signage

Standard commercially manufactured signs containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm are to be erected in prominent visible positions on the site when asbestos is being removed.

**Note:** This condition is imposed to ensure awareness of any hazard to the health and safety of persons working on the site and public.  
Standard Condition E42

## E.25 Notification of Asbestos Removal

In addition to the requirements for licensed asbestos removalists to give written notice to SafeWork NSW all adjoining properties and those opposite the development site must be notified in writing of the dates and times when asbestos removal is to be conducted.

The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email addresses.

**Note:** This condition has been imposed to ensure that local residents are informed and have adequate communication facilitated for incidents of asbestos removal  
Standard Condition E43

## E.26 Tree Preservation

All persons must comply with Chapter E.3 – Tree Management of Council's Development Control Plan (DCP) 2015, other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres



### General Protection Requirements

- a) The TPZ must be maintained during all development work unless otherwise specified within these conditions of consent.
- b) Excavation must cease where tree roots with a diameter exceeding 50mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

**Note** Trees must be pruned in accordance with *Australian Standard AS 4373 "Pruning of Amenity Trees"* and *WorkCover NSW Code of Practice Amenity Tree Industry*

### **E.27 Replacement/Supplementary trees which must be planted**

Any replacement or supplementary tree shall be grown in accordance with Tree stock for landscape use (AS 2303.2018). The replacement tree shall be planted in *deep soil landscaped area* and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it becomes a prescribed tree in accordance with Chapter E.3 of Council's Development Control Plan, it must be replaced with another of the same species which complies with the criteria outlined below.

Species/Type	Planting/Location	Container Size/Size of Tree (at planting)	Minimum Dimensions at Maturity (metres)
Eleaocarpus reticulatus or Eleaocarpus eumundii	Front Yard	100L	8 x 4

The project arborist shall document compliance with the above condition

### **E.28 Installation of stormwater pipes and pits in the vicinity of trees**

Excavation for the installation of stormwater pipes and pits within the specified radius from the trunks of the following trees shall be hand dug.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	Lagunaria patersonia	Street tree	4m

Any roots greater than 40mm diameter uncovered for the installation of stormwater pipes and pits shall not be severed and remain in situ bridging across the excavated trench. Pipes shall be guided under any roots greater than 40mm bridging across excavated trenches. Stormwater pits shall be positioned so that no roots greater than 40mm diameter are severed.

The project arborist shall document compliance with the above condition.

**F. CONDITIONS WHICH MUST BE SATISFIED PRIOR TO ANY OCCUPATION OR USE OF THE BUILDING (PART 6 OF THE ACT AND PART 8 DIVISION 3 OF THE REGULATION)**

**F.1 Occupation Certificate (section 6.9 of the Act)**

A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 6.10 of the Act) unless an Occupation Certificate has been issued in relation to the building or part.

**Note** New building includes an altered portion of, or an extension to, an existing building.

Standard Condition F1 (Autotext FF1)

**F.2 Commissioning and Certification of Systems and Works**

The Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier works-as-executed (WAE) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA confirming that the works, as executed and as detailed, comply with the requirement of this consent, the Act, the Regulations, any relevant construction certificate, the BCA and relevant Australian Standards.

Works-as-executed plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA must include but may not be limited to.

- a) Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- b) All flood protection measures.
- c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1: *Off-Street car parking*.
- d) All stormwater drainage and storage systems.
- e) All mechanical ventilation systems
- f) All hydraulic systems.
- g) All structural work.
- h) All acoustic attenuation work.
- i) All waterproofing.
- j) Such further matters as the Principal Certifier may require.

**Note** This condition has been imposed to ensure that systems and works as completed meet development standards as defined by the Act, comply with the BCA, comply with this consent and so that a public record of works as execute is maintained

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

**Note** The PC must submit to Council, with any Occupation Certificate, copies of WAE plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PC has relied in issuing any Occupation Certificate

Standard Condition F7 (Autotext FF7)

### F.3 Certification of Electric Vehicle Charging System

Prior to the issue of any Occupation Certificate or occupation or use of part of the building, the Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier, certification by a suitably qualified person that the electric vehicle circuitry, has been installed in accordance with the construction certificate plans and specifications as required by **Condition C.6**

Standard Condition F22 (Autotext FF22)

### F.4 Amenity Landscaping

The owner or principal contractor must install all approved amenity landscaping (screen planting, soil stabilisation planting, etc.) prior to any occupation or use of the site.

**Note** This condition has been imposed to ensure that the environmental impacts of the development are mitigated by approved landscaping prior to any occupation of the development

## G. CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE

Nil.

## H. CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF A FINAL OCCUPATION CERTIFICATE (SECTION 6.4 (C))

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

All BASIX commitments must be effected in accordance with the approved BASIX Certificate No. 1320394S\_04

**Note** Clause 154B(2) of the *Environmental Planning and Assessment Regulation 2000* provides: "A certifying authority must not issue a final Occupation Certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled "

Standard Condition H7 (Autotext HH7)

### H.2 Removal of Ancillary Works and Structures

The Principal Contractor or Owner must remove from the land and any adjoining public place:

- a) the site sign,
- b) ablutions,
- c) hoarding,
- d) scaffolding, and
- e) waste materials, matter, article or thing

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

Standard Condition H12 (Autotext HH12)

### H.3 Road Works (including footpaths)

The following works must be completed to the satisfaction of Council, in compliance with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012) unless expressly provided otherwise by these conditions at the Principal Contractor's or Owner's expense:

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

**Note** Security held by Council pursuant to section 4 17(6) of the Act will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the Final Occupation Certificate to Council. This form can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or obtained from Council's customer service centre  
Standard Condition H13 (Autotext HH13)

### H.4 DELETED.

### H.5 Landscaping

The *principal contractor* or *owner* must provide to *PCA* a works-as-executed landscape plan and certification from a qualified landscape architect/designer, horticulturist and/or arborist as applicable to the effect that the works comply with this consent.

**Note** This condition has been imposed to ensure that all Landscaping work is completed prior to the issue of the Final Occupation Certificate

## I. CONDITIONS WHICH MUST BE SATISFIED DURING THE ONGOING USE OF THE DEVELOPMENT

### I.1 Maintenance of BASIX Commitments

All BASIX commitments must be maintained in accordance with the approved BASIX Certificate 1320394S\_04.

**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

## I.2 Ongoing Maintenance of the On-Site Stormwater Management System

The owner(s) must in accordance with this condition and any positive covenant

- a) permit stormwater to be temporarily detained, retained and reused by the System,
- b) keep the system clean and free of silt rubbish and debris,
- c) maintain renew and repair as reasonably required from time to time the whole or part of the system so that it functions in a safe and efficient manner,
- d) carry out the matters referred to in paragraphs (b) and (c) at the Owners expense,
- e) not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly,
- f) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant,
- g) comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time stated in the notice and
- h) where the Owner fails to comply with the Owner's obligations under this covenant, permit the Council or its agents at all times and on reasonable notice at the Owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations

The Owner

- a) indemnifies the Council from and against all claims, demands, suits, proceedings or actions in respect of any injury, damage, loss, cost, or liability (**Claims**) that may be sustained, suffered, or made against the Council arising in connection with the performance of the Owner's obligations under this covenant except if, and to the extent that, the Claim arises because of the Council's negligence or default, and
- b) releases the Council from any Claim it may have against the Council arising in connection with the performance of the Owner's obligations under this covenant except if, and to the extent that, the Claim arises because of the Council's negligence or default

**Note.** This condition has been imposed to ensure that owners are aware of require maintenance requirements for their stormwater systems

**Note** This condition is supplementary to the owner(s) obligations and Council's rights under any positive covenant  
Standard Condition 129

## J. MISCELLANEOUS CONDITIONS

Nil

## K. ADVISINGS

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

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

Where there is any breach Council may without any further warning

- a) Issue Penalty Infringement Notices (On-the-spot fines),



- b) Issue notices and orders;
- c) Prosecute any person breaching this consent; and/or
- d) Seek injunctions/orders before the courts to restrain and remedy any breach.

#### Warnings as to potential maximum penalties

Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

#### Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order. This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

**Note** The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the *Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious.  
Standard Advising K1 (Autotext KK1)

## K.2 Dial Before You Dig



The Principal Contractor, Owner-builder or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and dial 1100 Before You Dig or visit [www.1100.com.au](http://www.1100.com.au)

When you contact Dial Before You Dig you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation.

Standard Advising K2 (Autotext KK2)

## K.3 Builder's Licences and Owner-builders Permits

Section 6 6(2)(d) of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appoint a Principal Contractor for residential building work who must be the holder of a contractor licence

The Owner(s) must appoint the Principal Certifier. The Principal Certifier must check that the required insurances are in place before the commencement of building work. The Principal Contractor (builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the *Home Building Act 1989* for the residential building work.

**Note** For more information go to the NSW Fair Trading website  
[www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating](http://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating)



Standard Condition K5 (Autotext KK5)

#### K.4 Building Standards - Guide to Standards and Tolerances

The Principal Certifier does not undertake detailed quality control inspections and the role of the Principal Certifier is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia.

Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the "NSW Guide to Standards and Tolerances 2017" are achieved

The quality of any development is a function of the quality of the Principal Contractor's or Owner-builder's supervision of individual contractors and trades on a daily basis during the development. The Principal Certifier does not undertake this role

Council, as the Principal Certifier or otherwise, does not adjudicate building contract disputes between the Principal Contractor, contractors and the Owner.

**Note** For more information on the *NSW Guide to Standards and Tolerances* go to the NSW Fair Trading website [www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renovate/guide-to-standards-and-tolerances](http://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renovate/guide-to-standards-and-tolerances) or call 133 220.

Standard Condition K6 (Autotext KK6)

#### K.5 SafeWork NSW Requirements

The *Work Health and Safety Act 2011* and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

**Note** For more information go to the SafeWork NSW website [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au) or call 131 050

Standard Condition K7 (Autotext KK7)

#### K.6 Dividing Fences

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

**Note:** Further information can be obtained from the NSW Civil and Administrative Tribunal [www.ncat.nsw.gov.au/Pages/cc/Divisions/dividing\\_fences.aspx](http://www.ncat.nsw.gov.au/Pages/cc/Divisions/dividing_fences.aspx)

**Note:** Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. Around 75% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. To contact the Community Justice Centres go to [www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au) or call 1800 990 777.

Standard Advising K10 (Autotext KK10)

#### K.7 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 4.17 of the *Act*.

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

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

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

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

**Note:** The Refund of Security Bond Application form can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)  
Standard Condition K15 (Autotext KK15)

## **K.8 Recycling of Demolition and Building Material**

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials  
Standard Condition K17 (Autotext KK17)

## **K.9 Owner-builders**

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

**Note** For more information go to the NSW Fair Trading website [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au) or call 133 220.  
Standard Condition K18 (Autotext KK18)

## **K.10 Pruning or Removing a Tree Growing on Private Property**

The provisions of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 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

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)

### K.11 Roads Act 1993 Application

Works or structures over, on or under public roads or footpaths are subject to sections 138, 139 and 218 of the *Roads Act 1993* and specifically

- Construction of driveways and/or new or alterations to footpath paving
- Alteration and/or extension to Council drainage infrastructure
- Alteration and/or addition of retaining walls
- Pumping of water to Council's below ground stormwater system
- Installation of soil/rock anchors under the roadway
- Installation of Stormwater outlet pipes across the nature strip

An "Application to Carry Out Works in a Public Road" form must be completed and lodged, with the application fee, at Council's Customer Services. Detailed plans and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage etc) within existing roads, must be attached, submitted to and approved by Council under section 138 of the *Roads Act 1993*, before the issue of any Construction Certificate.

Detailed engineering plans and specifications of the works required by this condition must accompany the application form. The plans must clearly show the following:

- Engineering drawings (plan, sections and elevation views) and specifications of the footpath, driveways, kerb and gutter, new gully pit showing clearly the connection point of site outlet pipe(s). Note, the connection drainage lines must be as direct as possible and generally run perpendicular to the kerb alignment.
- Engineering drawings of the new drainage line to be constructed joining the new and existing drainage pits including services.

All driveways must include a design longitudinal surface profile for the proposed driveway for assessment. The driveway profile is to start from the road centreline and be along the worst case edge of the proposed driveway. Gradients and transitions must be in accordance with clause 2.5.3, 2.6 of AS 2890.1 – 2004 Part 1 – *Off-street car parking*. The driveway profile submitted to Council must be to (1:25) scale (for template checking purposes) and contain all relevant details: reduced levels, proposed grades and distances.

The existing footpath level and grade at the street alignment of the property must be maintained unless otherwise specified by Council. Your driveway levels are to comply with AS2890.1 and Council's Standard Drawings. There may be occasions where these requirements conflict with your development and you are required to carefully check the driveway/garage slab and footpath levels for any variations.

**Note** Any adjustments required from the garage slab and the street levels are to be carried out internally on private property.

Drainage design works must comply with the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

Temporary ground anchors may be permitted, in accordance with Council's "Rock Anchor Policy"

Services Prior to any excavation works, the location and depth of all public utility services (telephone, cable TV, electricity, gas, water, sewer, drainage, etc ) must be ascertained. The Applicant shall be responsible for all public utility adjustment/relocation works, necessitated by the development work and as required by the various public utility authorities and/or their agents

All public domain works must comply with the latest version of Council's "*Specification for Roadworks, Drainage and Miscellaneous Works*" unless expressly provided otherwise by these conditions. This specification and the application form can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)

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

**Note:** When an application under the *Roads Act* is required, then four (4) weeks is to be allowed for assessment

**Note** *road* has the same meaning as in the *Roads Act 1993*

**Note** The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any Construction Certificate. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under *Road Act 1993* approvals may necessitate design and levels changes under this consent. This may in turn require the Applicant to seek to amend this consent.  
Standard Advising K24 (Autotext KK24)

## K.12 *Roads Act 1993* Application

Works or structures over, on or under public roads or footpaths are subject to sections 138, 139 and 218 of the *Roads Act 1993* and specifically

- Construction of driveways and/or new or alterations to footpath paving
- Alteration and/or extension to Council drainage infrastructure
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**Note:** *road* has the same meaning as in the *Roads Act 1993*.

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

Standard Advising K24 (Autotext KK24)