



Land and Environment Court New South Wales

Case Name:	Pike v Woollahra Municipal Council
Medium Neutral Citation:	[2023] NSWLEC 1385
Hearing Date(s):	Conciliation Conference on 24 May, 21 and 27 June 2023
Date of Orders:	21 July 2023
Date of Decision:	21 July 2023
Jurisdiction:	Class 1
Before:	Kullen AC
Decision:	<p>The Court orders that:</p> <ol style="list-style-type: none">(1) The Applicant is to pay the Respondent's costs thrown away, in the agreed sum of \$9,000, pursuant to s 8.15(3) of the <i>Environmental Planning and Assessment Act 1979</i> within 28 days of this judgment.(2) The Applicant's written request pursuant to cl 4.6 of Woollahra Local Environmental Plan 2014 seeking to vary the development standard in relation to the height of buildings in cl 4.3 in Woollahra Local Environmental Plan 2014 is upheld.(3) The appeal is upheld.(4) Development Application DA2022/350/1 for extensive alterations and additions to the existing dwelling including new subterranean basement level accommodating car lift, turntable and storage and new swimming pool with associated landscaping on Lot 13 in DP 1111463 and Lot 14 in DP 954 known as 23 Elizabeth Street, Paddington, is approved subject to the conditions in accordance with Annexure A.
Catchwords:	DEVELOPMENT APPEAL – conciliation conference – agreement between the parties - orders
Legislation Cited:	Environmental Planning and Assessment Act 1979, ss 4.15, 4.16, 8.7

Land and Environment Court Act 1979, s 34
State Environmental Planning Policy (Building
Sustainability Index: BASIX) 2004
State Environmental Planning Policy (Resilience and
Hazards) 2021, s 4.6
Woollahra Local Environmental Plan 2015, cl 2.2,
4.3, 4.6, 5.10, 5.21, 6.1, 6.2, 6.15

Texts Cited: Woollahra Community Participation Plan 2019
Woollahra Development Control Plan 2015
Woollahra Municipal Council, Paddington Floodplain
Risk Management Study 2019

Category: Principal judgment

Parties: Anne Pike (Applicant)
Woollahra Municipal Council (Respondent)

Representation: Counsel:
J Palmer (Solicitor) (Applicant)
Kara Mezinic (Solicitor)(Respondent)

Solicitors:
Pikes and Verekers Lawyers (Applicant)
HWL Ebsworth Lawyers (Respondent)

File Number(s): 2022/375684

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the deemed refusal of Development Application DA2022/350/1 (the DA).
- 2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 24 May and further adjourned to 21 and 27 June 2023. I presided over the conciliation conferences, which commenced with a site inspection on 24 May 2023.
- 3 The revised plans (dated May 2023 and June 2023) constituting an amendment to the DA were submitted by the applicant and these revised plans formed the basis of the discussion at the conciliation conference.
- 4 A number of objectors attended the on-site view and provided submissions.
- 5 At the series of s 34 conciliation conferences following the on-site view on 24 May 2023, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. This decision involved the Court upholding the appeal and granting development consent to the DA subject to conditions.
- 6 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision that the Court could have made in the proper exercise of its functions.
- 7 The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the DA.
- 8 There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties have identified and explained how the jurisdictional prerequisites of relevance have been satisfied in a written

submission accompanying the s 34 agreement, and those requirements have been satisfied as follows:

- (1) The DA was lodged by the registered proprietor of the subject site who provided owner's consent;
- (2) The DA was notified by the respondent for a period of 14 days, between 14 and 29 September 2022, in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Following submission of a replacement application, the DA was re-notified for 14 days, between 23 November and 8 December 2022. Fifteen submissions were received in response to the public notification.
- (3) In relation to the provisions of the Woollahra Local Environmental Plan 2014 (WLEP):
 - (a) The subject site is zoned R2 Low Density Residential pursuant to the provisions of cl 2.2 of the WLEP; and
 - (i) the proposed alterations and additions to the existing dwelling including new subterranean basement level accommodating car lift, turntable and storage and new swimming pool with associated landscaping are permissible with consent in the R2 Low Density Residential zone within which the subject site is located;
 - (ii) I am satisfied that the proposed development is consistent with the objectives for development within the zone in which the development is proposed to be carried out.
 - (b) Pursuant to cl 4.3 of the WLEP in relation to the height of buildings (HoB) a development standard of 9.5 metres (m) maximum building height is applicable to development of the subject site; and

- (i) the amended DA proposes a building height of 10.8m, which represents a 1.3m (or 14%) exceedance of the HoB development standard;
 - (i) the existing heritage dwelling currently erected on the subject site (which is to be retained) has a maximum height of 10.8m which already breaches the maximum building height by a similar margin. The non-compliance with the building height is a result of works to the existing roof and creation of an attic room with dormer windows on the rear elevation;
 - (ii) the Applicant has submitted a written request pursuant to the provisions of cl 4.6 of the WLEP, prepared by PCN Urban and dated 4 August 2022 seeking to vary the applicable HoB development standard.
- (c) The parties submit, and I am satisfied, that the applicant's amended cl 4.6 written request is well founded and that the variation to the HoB development standard is acceptable noting that:
 - (i) the provisions of cl 4.3(2) of WLEP provide a maximum height of buildings of 9.5m for development on the subject site. The breach in the HoB development standard arises from the proposed alterations and additions to the existing dwelling to provide for:
 - (A) Roof re-tiling of the existing roof at height of 10.8m (14% exceedance);
 - (B) Lining of the existing roof space to form an attic bedroom (11% exceedance);

- (C) Addition of two rear dormer windows to the attic bedroom (with a ridgeline at 9.6m or 1% exceedance);
- (ii) I am satisfied that compliance with the HoB development standard is unreasonable or unnecessary, as required under cl 4.6(3)(a) of WLEP because the proposed development achieves the objectives of the HoB development standard notwithstanding the HoB exceedance for the reasons provided within the Applicant's written request, which I adopt;
- (iii) I am also satisfied that there are sufficient environmental planning grounds to justify contravening the HoB development standard, as required under cl 4.6(3)(b) of WLEP, for the following reasons:
 - (A) the existing heritage dwelling on the site, which is proposed to be altered under the Applicant's DA, exceeds the HoB development standard in cl 4.3 of the WLEP. The major part of this dwelling is to be retained;
 - (B) the proposed roof tiling, inclusion of an attic room in the roof space and provision of rear dormer windows will facilitate the maintenance of the heritage dwelling and its adaptation to changing user requirements;
 - (C) The character of the neighbourhood is one of greater building heights than 9.5m. The proposed exceedance will be consistent with the character of the surrounding streetscape and the Paddington Heritage Conservation Area;

- (D) the proposed dormer windows will provide a more architecturally coherent dormer location in the existing roof. The exceedance will enable the rear dormer windows to be located appropriately for the architectural proportions of the existing heritage building; and
- (iv) the approval of the proposed development will be in the public interest for the reasons provided above (at [3(c)(ii)] and [3(c)(iii)]). Furthermore, the proposed development is consistent with the objectives for the HoB development standard and for development within the R2 zoning of the subject site for reasons provided within the Applicant's written request, which I also adopt.
- (d) The provisions of cl 5.10 of the WLEP concern heritage conservation. The subject site is within the Paddington Heritage Conservation Area (HCA) (item C8 Pt 2 of Sch 5 to the WLEP). As required by cl 5.10(5) of WLEP 2014, the effect of the proposed development on the item and HCA must be considered. A Heritage Impact Statement prepared by Weir Phillips Heritage and Planning dated August 2022 was submitted with the DA. The parties agree, and I am satisfied, that the report's conclusion that *"the proposed works will have an acceptable impact on the Heritage Conservation Area"* is satisfactory in relation to the provisions of cl 5.10 of the WLEP.
- (e) The provisions of cl 5.21 of the WLEP concern flood planning. The subject site is within the flooding planning area (as identified in the Woollahra Municipal Council Paddington Floodplain Risk Management Study 2019). The DA proposes excavation of a basement for car parking and other works such as a lift and storage areas. The parties have confirmed, and I am satisfied, that the design of the proposed development is consistent with all

the requirements listed in cl 5.21(2) and those matters listed in cl 5.21(3) of the WLEP have been considered in the assessment of the proposed development. A Flood Risk Management Report has been provided by the applicant and its recommendations have been included as requirements to be satisfied under the parties' agreed condition A.3. Various further conditions of consent relating to the management of flood planning outcomes have been proposed including C.24, E.11, E.29, F.5, H.6, and I.7.

- (f) The provisions of cl 6.1 of the WLEP concern acid sulfate soils. The subject site is not classified as having acid sulfate soils, and therefore the provisions of cl 6.1 of WLEP are not engaged.
- (g) The provisions of cl 6.2 of the WLEP concern earthworks, and the proposed development includes excavation of a basement for car parking and other works such as a lift and storage areas. The parties have confirmed, and I am satisfied, those matters identified in cl 6.2(3) of WLEP have been considered, noting that the amendments to the DA satisfactorily resolve the initial contentions raised by council. A Geotechnical and Hydrogeological Monitoring and Contingency Plan has been provided and is incorporated into condition A.3. Various conditions of consent relating to the management of earthworks have been proposed including C.18, D.10, E.26, E.28, and F.5.
- (h) The provisions of cl 6.15 of the WLEP concern stormwater management and the proposed development will connect to the Respondent's existing stormwater drainage system. The parties agree, and I am satisfied, that the proposed development is designed to achieve the outcomes identified under the provisions of cl 6.15(3)(a) to (c). Various conditions of consent relating to stormwater management have been imposed.

- (4) In relation to the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 the applicant's amended DA is accompanied by a BASIX certificate (Certificate No A466471 prepared by Sustain Build Projects dated 19 August 2022) which is consistent with the amended DA.
- (5) In relation to the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience SEPP) the parties have advised, and I am satisfied, that the subject site has been used historically for residential purposes, and there is no proposed change of use, and therefore no requirement for any further site investigations to satisfy the provisions of s 4.6 of the Resilience SEPP. Condition C.12 has been imposed in the event that any unexpected finds are uncovered.
- (6) The parties submit, and I am satisfied, that the DA as amended has considered and addressed the provisions in Woollahra Development Control Plan 2015 (the DCP) such that the controls in those chapters are met or if they are not met they achieve the objectives of those controls as required under s 4.15(3A)(b) of the EPA Act:
 - (a) Part A: Introduction and Administration
 - (b) Part B: General Residential;
 - (c) Part C: Heritage Conservation Areas; and
 - (d) Part D: General Controls for All Development.

9 Having considered the advice of the parties provided above at [8], I am satisfied that:

- (1) the applicants' DA can be approved having regard to the matters in s 4.15(1)(b) – (e) of the EPA Act;

- (2) the jurisdictional prerequisites on which I must be satisfied before I can exercise the power under s 4.16 of the EPA Act have been satisfied; and
 - (3) approval of the proposed development is in the public interest.
- 10 Further, I am satisfied that the parties' decision is one that the Court could have made in the proper exercise of its functions, as required by s 34(3) of the LEC Act.
- 11 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.
- 12 In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any merit assessment of the issues that were originally in dispute between the parties.
- 13 The Court notes that:
 - (1) The applicant's amended DA is accompanied by a BASIX certificate (Certificate No A466471 prepared by Sustain Build Projects dated 19 August 2022)
- 14 The Court orders:
 - (1) The Applicant is to pay the Respondent's costs thrown away, in the agreed sum of \$9,000, pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act* 1979 within 28 days of this judgment.
 - (2) The Applicant's written request pursuant to cl 4.6 of Woollahra Local Environmental Plan 2014 seeking to vary the development standard in relation to the height of buildings in cl 4.3 in Woollahra Local Environmental Plan 2014 is upheld.
 - (3) The appeal is upheld.

- (4) Development Application DA2022/350/1 for extensive alterations and additions to the existing dwelling including new subterranean basement level accommodating car lift, turntable and storage and new swimming pool with associated landscaping on Lot 13 in DP 1111463 and Lot 14 in DP 954 known as 23 Elizabeth Street, Paddington, is approved subject to the conditions in accordance with Annexure "A".

I certify that this and the preceding 8 pages are a true copy of my reasons for judgment.



.....

G Kullen

Acting Commissioner of the Court

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No:	DA2022/350/1
Development:	Extensive alterations and additions to the existing dwelling including new subterranean basement level accommodating car lift, turntable and storage and a new swimming pool with associated landscaping
Site:	23 Elizabeth Street, Paddington

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

Date of determination:	21 July 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 23 Elizabeth Street, Paddington.

The conditions of consent are as follows:

A. General Conditions

A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* ("the *Act*") and the provisions of the *Environmental Planning and Assessment Regulation 2021* ("the *Regulation*") such conditions being reasonable and relevant to the development as assessed pursuant to section 4.15 of the *Act*.

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

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.

A.3 Approved Plans and Supporting Documents

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

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

Reference	Description	Author/Drawn	Date(s)
DA01 Rev C	Site Plan/Proposed Roof Plan	Weir Phillips Architects	16/06/2023
DA02 Rev C	Demolition Plan	Weir Phillips Architects	16/06/2023
CD01 Rev D	Proposed Lower Ground Floor Plan	Weir Phillips Architects	16/06/2023
CD02 Rev F	Proposed Ground Floor Plan	Weir Phillips Architects	16/06/2023
DA11 Rev E	Proposed First Floor Plan	Weir Phillips Architects	16/06/2023
DA12 Rev D	Proposed Attic Floor Plan	Weir Phillips Architects	16/06/2023
DA13 Rev D	Proposed Roof Plan	Weir Phillips Architects	16/06/2023
DA20 Rev D	Proposed Front Elevation	Weir Phillips Architects	16/06/2023
DA21 Rev E	Proposed Rear Elevation	Weir Phillips Architects	16/06/2023
DA22 Rev D	Proposed Northern Elevation	Weir Phillips Architects	16/06/2023
DA23 Rev D	Proposed Southern Elevation	Weir Phillips Architects	16/06/2023

DA24 Rev D	Proposed Elizabeth Street Elevation	Weir Phillips Architects	16/06/2023
DA25 Rev D	Elizabeth Place Elevation	Weir Phillips Architects	16/06/2023
CD30 Rev D	Section AA	Weir Phillips Architects	16/06/2023
CD31 Rev C	Section BB	Weir Phillips Architects	16/06/2023
DA32 Rev D	Section CC	Weir Phillips Architects	16/06/2023
DA33 Rev E	Section DD	Weir Phillips Architects	16/06/2023
DA34 Rev C	Section EE	Weir Phillips Architects	16/06/2023
DA60 Rev D	External Materials + Colours	Weir Phillips Architects	16/06/2023
A466471	BASIX Certificate	Sustain Build Projects	19/08/2022
632 DA 01 Rev C	Cover Page	Myles Baldwin Design	19/06/2023
632 DA 02 Rev C	Plant Schedule	Myles Baldwin Design	19/06/2023
632 DA 10 Rev C	Landscape Plan 1 (Front Garden)	Myles Baldwin Design	19/06/2023
632 DA 11 Rev C	Landscape Plan 2 (Rear Garden)	Myles Baldwin Design	19/06/2023
632 DA 12 Rev C	Landscape Plan 3 (Level 1)	Myles Baldwin Design	19/06/2023
632 DA 45 Rev C	Typical Details	Myles Baldwin Design	19/06/2023
632 DA 50 Rev C	General Specification	Myles Baldwin Design	19/06/2023
J220062	Flood Risk Management Report	Neilly Davies & Partners	11 May 2023
210166	Stormwater Drainage Report	Enspire Solutions Pty Ltd	7/06/2023
210166-DA-C01.01 Rev 3	Cover Sheet and Drawing Schedule	Enspire Solutions Pty Ltd	7/06/2023
210166-DA-C03.01 Rev 3	Erosion and Sedimentation Control Plan and Details	Enspire Solutions Pty Ltd	7/06/2023
210166-DA-C05.01 Rev 3	Concept Stormwater Management Plan – Ground Floor	Enspire Solutions Pty Ltd	7/06/2023
210166-DA-C05.02 Rev 3	Concept Stormwater Management Plan – Lower Ground Floor	Enspire Solutions Pty Ltd	7/06/2023
210166-DA-C14.01 Rev 3	Stormwater Details	Enspire Solutions Pty Ltd	7/06/2023
210166-DA-C17.01 Rev 3	Stormwater Longitudinal Section	Enspire Solutions Pty Ltd	7/06/2023
34775Rpyt	Geotechnical Report	JK Geotechnics	26/04/2022
34775Rpt2	Geotechnical and Hydrogeological Monitoring and Contingency Plan	JK Geotechnics	10/05/2023
J5335	Schedule of Conservation Works	Weir Phillips Heritage and Planning	May 2023
J5335	Schedule of Items to be Retained	Weir Phillips Heritage and Planning	May 2023
	Management Plan Flood Gate Lift Operation	Weir Phillips Architects	6/06/2023
22S0023	Construction Methodology Report	Structure Consulting Engineers	6/06/2023
23164	Construction (Traffic) Management Plan	Varga Traffic Planning Pty Ltd	12/05/2023
23164	Traffic Impact Matters	Varga Traffic Planning Pty Ltd	12/05/2023
	Soil and Waste Management Plan	Weir Phillips Architects	August 2022

Note: Warning to Accredited Certifiers – You should always insist on sighting the original plans. You should not rely solely upon the plan reference numbers in this condition. Should the Applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plan.

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*.)

A.4 Tree Preservation and 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 may be removed:

Council Ref No.	Species	Location	Dimension (metres)
1 & 2	<i>Syagrus romanzoffiana</i> (Cocos palm)*	Front	11 x 3
3	<i>Murraya paniculata</i> (Mock Orange)	Front	5 x 5

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.

A.5 Ancillary Aspect of the Development (Repair Damaged Infrastructure)

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.

A.6 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.

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.

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.

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

B.4 Noise Control Objectives During Demolition Works

To assist in managing impacts of noise from the demolishing of the existing dwelling and outbuilding on residences and other sensitive land uses, it is recommended that the *NSW Department of Environment & Climate Change: Construction Noise Guideline* be applied to the site to provide a quantitative and qualitative assessment for evaluating performance and compliance of resultant noise from demolishing works of the existing dwelling and outbuilding. In particular reference is made to Table 2 of the *NSW Department of Environment & Climate Change: Construction Noise Guideline* which sets out management levels for noise at residences and other sensitive land uses.

B.5 Aboriginal Objects – Unexpected Findings

If unexpected Aboriginal objects are found during the works covered by this approval, all work must cease immediately in the affected area(s) and the Department of Premier and Cabinet, Community Engagement, Heritage must be notified. Additional assessment and approval pursuant to the National Parks and Wildlife Act 1974 may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Note: The Definition of Aboriginal object as per the Woollahra Local Environmental Plan 2014: any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

Standard Condition: B10

C. Conditions which must be satisfied prior to the issue of any Construction Certificate

C.1 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
LONG SERVICE LEVY under <i>Building and Construction Industry Long Service Payments Act 1986</i>			
Long Service Levy www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator	Contact LSL Corporation or use online calculator	No	
SECURITY under section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>			
Property Damage Security Deposit - making good any damage caused to any property of the Council	\$55,100	No	T115
Infrastructure Works Bond -completing any public work required in connection with the consent.	\$10,755	No	T113

Infrastructure Works Bond – remedying any defects in any public work that arise within 6 months after the work is completed	\$88,760	No	T113
DEVELOPMENT LEVY under Woollahra Section 7.12 Development Contributions Plan 2021 This plan may be inspected at Woollahra Council or downloaded at www.woollahra.nsw.gov.au			
Development Levy (section 7.12)	\$21,489.77 + Index Amount	Yes, quarterly	T96
INSPECTION FEES under section 608 of the <i>Local Government Act 1993</i>			
Public Tree Management Inspection Fee	\$221.34	No	T45
Public Road/Footpath Infrastructure Inspection Fee	\$615	No	
Security Administration Fee	\$215	No	T16
Construction of Council's Stormwater Drainage Pipe Inspection Fee (S68B Fee)	\$770	No	T45
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$177,926 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 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 94A 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 94A 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.

C.2 BASIX Commitments

The Applicant must submit to the Certifying Authority BASIX Certificate No.A466471 with any application for a Construction Certificate.

Note: Where there is any proposed change in the BASIX commitments the Applicant must submit 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".

C.3 Structural Adequacy of Existing Supporting Structures

A certificate from a professional engineer (structural engineer), certifying the adequacy of the existing supporting structure to support the additional loads proposed to be imposed by the development, must be submitted with the Construction Certificate application.

Note: This condition is imposed to ensure that the existing structure is able to support the additional loads proposed.

C.4 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.

C.5 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.

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.

C.6 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 Waters 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*.

C.7 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 the *background noise level*. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed *background noise level*, at any time.

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 $L_{A90, 15 \text{ minute}}$ 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
2. **Association of Australian Acoustical Consultants**—professional society of noise related professionals www.aaac.org.au.

C.8 Light and Ventilation

The *Construction Certificate* plans and specifications, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail all a lighting, mechanical ventilation or air-conditioning systems complying with Part F.4 of the *BCA* or clause 3.8.4 and 3.8.5 of the *BCA* Housing Provisions, inclusive of [AS 1668.1](#), [AS 1668.2](#) and [AS/NZS 3666.1](#). If an alternate solution is proposed then the *Construction Certificate* application must include a statement as to how the performance requirements of the *BCA* are to be complied with and support the performance based solution by expert *evidence of suitability*. This condition does not set aside the mandatory requirements of the *Public Health (Microbial Control) Regulation 2000* in relation to *regulated systems*. This condition does not set aside the effect of the *Protection of the Environment Operations Act 1997* in relation to offensive noise or odour.

Note: Clause 98 of the *Regulation* requires compliance with the *BCA*. Clause 145 of the *Regulation* prevents the issue of a *Construction Certificate* unless the *Accredited Certifier/Council* is satisfied that compliance has been achieved. Schedule 1, Part 3 of the *Regulation* details what information must be submitted with any *Construction Certificate*. It is the Applicant's responsibility to demonstrate compliance through the *Construction Certificate* application process. Applicants must also consider possible noise and odour nuisances that may arise. The provisions of the *Protection of the Environment Operations Act 1997* have overriding effect if offensive noise or odour arises from the use. Applicant's must pay attention to the location of air intakes and air exhausts relative to sources of potentially contaminated air and neighbouring windows and air intakes respectively, see section 2 and 3 of [AS 1668.2](#).

C.9 Noise Control – Swimming Pool/Spa Pool Pumps and Associated Equipment

The siting of the swimming pool/spa pool pump(s) and associated equipment are to be located as far as possible from the neighbour's dwelling to minimise the impact on adjoining residents. The pump(s) and associated equipment are to be housed in an acoustically treated enclosure so noise from the operation of the pump(s) and associated equipment are not audible beyond the boundaries of the site.

C.10 Ventilation – Enclosures Used by Vehicles (Car Parks, Automotive Service, Enclosed Driveways, Loading Docks and the like)

The *basement* in which vehicles powered by internal combustion engines are parked, serviced or operated are required to comply with Section 4 'Ventilation of Enclosures used by Vehicles with Internal Combustion Engines' of Australian Standard 1668.2-1991. In general air distribution must achieve uniform dilution of contaminants in the garage and maintain contaminant concentrations below recommended exposure standards.

The *basement* must be naturally ventilated or provided with a combination of both supply and exhaust mechanical ventilation. The applicant is to determine the method of ventilation of the *basement* and provide details to the Certifying Authority accordingly. Except as varied in accordance with Clause 4.4.1 (a), (b) or (c), the *basement* shall be mechanically ventilated by a combination of general exhaust and supply flow rates in accordance with Australian Standard 1668.2-1991.

C.11 Ventilation – Internal Sanitary Rooms

All internal sanitary rooms and laundry facilities not provided with natural ventilation must be provided with a system of mechanical exhaust ventilation in accordance with *Table B1 Minimum Exhaust Ventilation Flow Rates of AS 1668.2-1991*. Details of any proposed mechanical ventilation system(s) being submitted with the Construction Certificate plans and specifications, required to be submitted to the Certifying Authority demonstrating compliance with AS 1668 Parts 1 & 2.

C.12 Land Contamination – Uncovering of Unexpected Contaminants

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination must be immediately notified to Woollahra Council in writing and the Principal Certifying Authority. In the instance works cause the generation of odours or uncovering of unexpected contaminants, works are to immediately cease, Council is to be notified and a suitably qualified environmental consultant appointed to further assess the site.

Note: Woollahra Council may also request that a NSW EPA accredited site auditor is involved to assist with the assessment of the contaminated land situation and review any new contamination information. The applicant must also adhere to any additional conditions which may be imposed by the accredited site auditor.

C.13 Tree Management

(a) The Construction Certificate plans and specifications shall show the following information:

(i) 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

(b) Areas for future planting must be plotted on the submitted landscape or architectural plans and be protected from damage, especially soil compaction and contamination from construction activity by erecting a barrier or implementing ground protection.

Where ground protection during construction activity is not implemented, remediation measures prior to planting such as soil ripping or subsoil aeration must be employed.

Species/Type	Planting location	Container size/Size of tree (when planted)	Minimum soil dimensions
2 x <i>Cupaniopsis anacardioides</i> (Tuckaroo)	Zone 2	200 ltr	Volume = 9m ³ Depth = 800mm Area 3.5 x 3.5
1 x <i>Elaeocarpus reticulatus</i> (BlueBerry Ash)	Zone 2	200 ltr	Volume = 9m ³ Depth = 800mm Area 3.5 x 3.5
1 x <i>Magnolia grandiflora</i> (Bull bay Magnolia)	Zone 1	400 ltr	Volume = 9m ³ Depth = 800mm Area 3.5 x 3.5
2 x <i>Pyrus nivalis</i> (now pear)	Zone 2	400 ltr	Volume = 9m ³ Depth = 800mm Area 3.5 x 3.5
<i>Olea europaea</i> (Olive Tree)	Zone 3	400 ltr	Volume = 9m ³ Depth = 800mm Area 3.5 x 3.5
3x <i>Phoenix roebelenii</i> (Pygmy Date Palm)	Zone 2	200 ltr	Volume = 9m ³ Depth = 800mm Area 3.5 x 3.5

Note: All replacement trees are to be NATSPEC grown.

C.14 Road and Public Domain Works – Council Approval Required

A separate application under Section 138 of the *Roads Act* 1993 is to be made to, and approved by Council as the road authority, for the following infrastructure works prior to the issuing of any Construction Certificate. Detailed engineering drawings prepared by a suitably qualified and experienced civil engineer for the following infrastructure works which must be prepared out at the applicant's expense:

1. Roads and Footpath Works

- a) The removal of the existing vehicular crossing, including layback and gutter and the construction of a new **3 metre** wide vehicular crossing and any associated road restoration and footpath adjustment works in accordance with Council's Crossing Specification and Standard Drawing RF2_D and to the satisfaction of Council's Assets Engineer. The new vehicular crossing shall be constructed at right angle to the street kerb in plain concrete.
- b) The submission of design longitudinal surface profiles along each side/edge for the proposed driveway for assessment. The profile must be starting from the road centreline to the garage incorporating Council's standard layback and gutter. It must also contain all relevant details: both existing and proposed levels in AHD, grades representing in percentage and horizontal distances presenting in chainages. Additional chainages must be provided where there is change in grade. The footpath which forms part of the new crossing shall have a crossfall with minimum 2% and maximum 3% falling towards the layback to comply with Council's Crossing Specification.

- c) The removal of all redundant crossings and laybacks which will be no longer required.
- d) The reconstruction of the footpath, kerb and gutter along the Elizabeth Place for the full frontage of the site.

2. Drainage Works

- a) The reconstruction of the existing kerb inlet pit on Elizabeth Place directly in front of the site.

Bond

- a) A bond of \$10,755 will be used as security to ensure the satisfactory completion of the infrastructure works. The security or bank guarantee must be the original unconditional bank guarantee with no expiry date.
- b) Council may use all or part of the Infrastructure Bond as well as the Property Damage Security Deposit to meet the cost of removing or completing the works if they do not meet Council's requirements.
- c) The Deposit/Bond will not be released until Council has inspected the site and is satisfied that the Works have been completed in accordance with Council approved drawings and to Council requirements

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: 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 *Roads 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.

Note: See condition K24 in *Section K. Advising of this Consent titled Roads Act Application*.

C.15 Soil and Water Management Plan – Submissions & 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 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, and *The Blue Book* is available at 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.

C.16 Professional Engineering Details

The Construction Certificate plans and specifications, required by clauses 7 and 8 of the Regulation *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. In particular, it must include the following:

- a) Construction Methodology Report, prepared by Structure Consulting Engineers, referenced 22S0023, rev 2, dated 6 Jun 2023,
- b) Construction Methodology Sketches, prepared by Structure Consulting Engineers,
 - referenced 22S0023_CM_01, dated 8 May 2023;
 - referenced 22S0023_CM_02 to CM_15, dated 6 Jun 2023.
- c) Geotechnical and Hydrogeological Investigation Report, prepared by JK Geotechnics, referenced 34775Rrpt, dated 26 Apr 2022,
- d) Geotechnical and Hydrogeological Monitoring and Contingency Plan, prepared by JK Geotechnics, referenced 34775Rrpt2, dated 10 May 2023,
- e) Drainage Report, prepared by Enspire Solutions Pty Ltd, referenced 210166, dated 10 May 2023,
- f) Flood Risk Management Report, prepared by Neilly Davies & Partners, referenced J220062, dated 11 May 2023.

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.

C.17 Engineer Certification

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.

Any structural design is not to incorporate any temporary or permanent underpinning works or ground anchors, bolts, etc which encroach outside the boundaries of the subject property. Structural Engineer certification to this effect must be submitted to the Certifying Authority prior to issue of any Construction Certificate.

C.18 Geotechnical and Hydrogeological Design, Certification & Monitoring

Prior to the issue of the Construction Certificate, the applicant must submit, for approval by the Principal Certifier, a detailed geotechnical and hydrogeological report prepared by a Chartered Geotechnical Engineer with National Engineering Register (NER) credentials in accordance with Council's DCP and Councils document "*Guidelines for Preparation of Geotechnical and Hydrogeological Reports*". The report must include 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 shall be generally prepared in accordance with the following supporting documentation:

- a) Construction Methodology Report, prepared by Structure Consulting Engineers, referenced 22S0023, rev 2, dated 6 Jun 2023,
- b) Construction Methodology Sketches, prepared by Structure Consulting Engineers,
 - referenced 22S0023_CM_01, dated 8 May 2023;
 - referenced 22S0023_CM_02 to CM_15, dated 6 Jun 2023.
- c) Geotechnical and Hydrogeological Investigation Report, prepared by JK Geotechnics, referenced 34775Rrpt, dated 26 Apr 2022.
- d) Geotechnical and Hydrogeological Monitoring and Contingency Plan, prepared by JK Geotechnics, referenced 34775Rrpt2, dated 10 May 2023.
- e) Drainage Report, prepared by Enspire Solutions Pty Ltd, referenced 210166, dated 10 May 2023,

In addition, the professional engineer shall certify that:

- a) Appropriate support and retention is provided 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.
- b) Appropriate support and retention is provided to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology (behaviour of groundwater).
- c) Foundation tanking is provided 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) Tanking of all below ground structures is provided to prevent the entry of all ground water such that they are fully tanked and no on-going dewatering of the site is required.
- e) A Geotechnical and Hydrogeological Monitoring Program is provided 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.

C.19 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.

C.20 Parking Facilities

The Construction Certificate plans and specifications required by clause 7 and 8 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 must include detailed plans and specifications for all bicycle, car and commercial vehicle parking in compliance with AS2890.3:2015 *Parking Facilities - Bicycle Parking Facilities*, AS/NZS 2890.1:2004 : *Parking Facilities - Off-Street Car Parking* and AS 2890.2:2018 – *Off-Street Parking: Commercial Vehicle Facilities* respectively.

Access levels and grades must comply with access levels and grade required by Council under the *Roads Act 1993*.

The Certifying Authority has no discretion to reduce or increase the number or area of car parking or commercial parking spaces required to be provided and maintained by this consent.

C.21 Reconstruction of Council's Stormwater Drainage System

A separate application under Section 68 of the Local Government Act 1993 is to be made to and be approved by Council for the following works prior to the issuing of any Construction Certificate. The works must be carried out at the applicant's expense:

- a) The existing Council's underground drainage pipelines traversing the site shall be removed and replaced with new minimum Class 4, 525mm diameter RRJ steel reinforced concrete pipes (RCP) between the existing kerb inlet pits fronting the site on Elizabeth Street and Elizabeth Lane, together with the construction of two new minimum 900mm x 900mm reinforced concrete junction pits with bolted-down Gatic lid, in accordance with Council's Specification and the stormwater

management plans, prepared by Enspire Solutions Pty Ltd, referenced 210166-DA, drawing numbered C01.01; C03.01; C05.01, C05.02, rev 3, dated 7 Jun 2023 and drawing numbered C014.01; C17.01, rev 2, dated 7 Jun 2023,

- b) The two new junction pits shall be constructed with reinforced concrete with Class D bolted-down Gatic lid. Structural details and certification from a practising Structural Engineer must be submitted,
- c) *The new Class 4, 525mm diameter RRJ steel reinforced concrete pipes (RCP) shall be concrete encased for the full length between the two new minimum 900mm x 900mm reinforced concrete junction pits. Encasement details must be included in the drawings,*
- d) The existing kerb inlet pit fronting the site on Elizabeth Lane shall be reconstructed to Council's Specification for Roadworks, Drainage and Miscellaneous Work and Standard Drawings.

Detailed design including longitudinal section of the proposed Class 4, 525mm diameter steel reinforced concrete pipes (RCP) and the two new minimum 900mm x 900mm reinforced concrete junction pits shall be prepared by a suitably qualified civil engineer. Trench details shall be included in the design drawings to comply with Council's Specification and AS3725.

For the purpose of inspections carried out by Council's Engineer, the corresponding fees set out in Council's current Fees and Charges Schedule are payable to Council.

A bond of \$88,760 will be used as security to ensure the satisfactory completion of the infrastructure works. The security or bank guarantee must be the original unconditional bank guarantee with no expiry date.

Council may use all or part of the Infrastructure Bond as well as the Property Damage Security Deposit to meet the cost of removing or completing the works if they do not meet Council's requirements.

The Deposit/Bond will not be released until Council has inspected the site and is satisfied that the Works have been completed in accordance with Council approved drawings and to Council requirements

The developer must meet all costs of construction / reconstruction of any part of Council's drainage system (including any design drawings and specifications) required to carry out the approved development. In addition, the developer shall also be responsible for carrying out all service investigations to allow the construction / reconstruction works.

The design and construction of the works must be in accordance with the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management and "Specification for Road Works, Drainage and Miscellaneous Works" which include Council's standard drawings. These documents are available from Council's website 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.

C.22 Stormwater Management Plans

Prior to issue of the Construction Certificate, the applicant must submit, for approval by the Certifying Authority, detailed Stormwater Management Plans for the site. The

Stormwater Management Plan must be prepared by a suitably qualified civil engineer with Chartered status which detail:

- a) the design generally in accordance with the following stormwater management plans, prepared by Enspire Solutions Pty Ltd:
 - referenced 210166-DA, drawing numbered C01.01, C03.01, C05.01, C05.02, rev 3, dated 7 Jun 2023;
 - drawing numbered C014.01, C17.01, rev 2, dated 7 Jun 2023,
 - drawing numbered C05.03, C05.04, C05.05, rev 1, 7 Jul 2023.
- b) the following amendments to the stormwater management plans:
 - A non-return flap valve shall be provided to the proposed boundary junction pit to prevent the backflow of floodwaters from Elizabeth Street onto the rear courtyard. Alternatively, the surface level of the proposed grated pit shall be minimum 300mm above the 1% AEP flood levels on Elizabeth Street.
- c) the discharge of stormwater, by direct connection, to the existing kerb inlet pit on Elizabeth Street,
- d) compliance the objectives and performance requirements of the BCA,
- e) any rainwater tank (see Note below) required by BASIX commitments including their overflow connection to the Stormwater Drainage System,
- f) general compliance with Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management;

Layout plan

A detailed drainage plan at a scale of 1:100 based on drainage calculations prepared in accordance with the Institute of Engineers Australia publication, *Australian Rainfall and Run-off*, 1987 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.

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"*.

C.23 Non-gravity Drainage Systems

Prior to issue of the Construction Certificate, the applicant must submit, for approval by the Certifying Authority, detailed Stormwater Management Plans for the site. The Stormwater Management Plan must be prepared by a suitably qualified civil engineer with Chartered status which detail:

The Stormwater Management Plan must detail the non-gravity drainage systems (pump/sump systems) being designed in accordance with the following stormwater management plans, prepared by Enspire Solutions Pty Ltd, referenced 210166-DA,

- drawing numbered C01.01, C03.01, C05.01, C05.02, rev 3, dated 7 Jun 2023;
- drawing numbered C014.01, C17.01, rev 2, dated 7 Jun 2023;
- drawing numbered C05.03, C05.04, C05.05, rev 1, 7 Jul 2023.

In addition, all requirements stated in Section 6.2.4 – “Non-gravity drainage systems” of Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management and AS/NZS 3500.3 Plumbing and drainage Part 3: Stormwater drainage, shall be complied with.

Note: The Woollahra DCP is available from Council's website www.woollahra.nsw.gov.au.

C.24 Flood Protection

The Construction Certificate plans and specifications, required by clause 7 and 8 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL) detailing:

- a. A permanent flood risk management plan shall be installed in a prominent area of the garage.
- b. The garage parking area shall be protected by either a mechanical flood barrier with the threshold set to the flood planning level of 64.25m AHD or physical barrier to 64.05m AHD.
- c. Permanent brass plaques are to be mounted adjacent to all mechanical flood barriers explaining their purpose and operation.
- d. All below ground construction is to be fully tanked.
- e. Emergency self-powered lights, indicating the safe exit to a flood free area above the probable maximum flood (PMF) are to be installed in any enclosed area below the 1% AEP flood area.
- f. Flood compatible materials shall be used for all flood exposed construction.
- g. All flood exposed electrical wiring and equipment is to be waterproofed.
- h. The existing Council drainage pipe that traverses the development site shall be replaced with Class 4, 525mm diameter RRJ steel reinforced concrete pipes.
- i. A full post construction CCTV survey of any new pipe systems connection to Council's existing system shall be provided to Council.
- j. All flood protection measures shall be inspected and certified as fit for purpose after construction is complete by an engineer experienced in flood mitigation.

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.

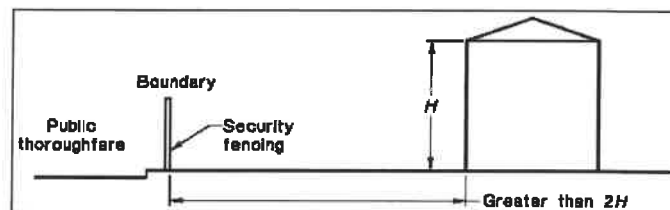
In this condition, a reference to the BCA is a reference to that code as in force on the date the application for the relevant Construction Certificate is made.

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.

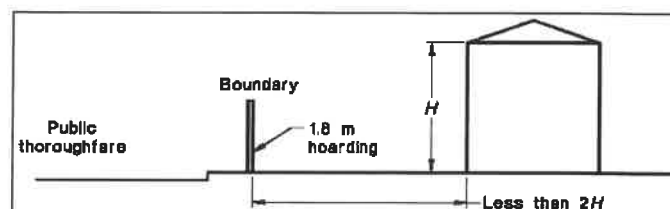
D.2 Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection

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.



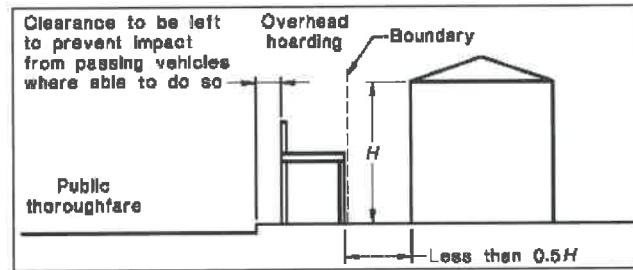
Type B Hoarding

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

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

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:

- 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 or for more information contact Council's Cultural Development Team.

D.3 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*.

D.4 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.

D.5 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/) 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 and *The Blue Book* is available at 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.

D.6 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 1.4 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 6.6(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

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 6.6(2) of the *Act*.

D.7 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.

D.8 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 the Structural Engineer.

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

- a) 21 Elizabeth Street
- b) 25 Elizabeth Street

The dilapidation reports must be completed and submitted to the *Certifying Authority* for approval. An approved copy of the 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 Section 6.6(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.

Note: Also refer to the Dilapidation Report Advising for more information regarding this condition

D.9 Dilapidation Reports for public infrastructure

To clarify the existing state of public infrastructure prior to the commencement of any development (including prior to any demolition), the Principal Contractor must submit a dilapidation report, prepared by a professional engineer, on Council's infrastructure within and near the development site.

The dilapidation report must be submitted to Council prior to the commencement of any work and include:

- a) photographs showing any existing damage to the road pavement fronting the site,
- b) photographs showing any existing damage to the kerb and gutter fronting the site,
- c) photographs showing any existing damage to the footway including footpath pavement fronting the site,
- d) photographs showing any existing damage to retaining walls within the footway or road,
- e) closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
- f) the full name and signature of the professional engineer.

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.

The dilapidation report must specify (with supporting photographic/DVD evidence) the exact location and extent of any damaged or defective public infrastructure prior to the commencement of any work. 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 Principal Contractor fails to submit the dilapidation 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.

D.10 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*.

D.11 Construction Management Plan – Approval & Implementation

As a result of the site constraints, limited space and access a Construction Management Plan (CMP) is to be submitted to Council. Also, due to lack of on-street parking a Work Zone may be required during construction.

The Principal Contractor or Owner must submit an application for approval of the CMP by Council's Traffic Engineer and pay all fees associated with the application.

The CMP must be submitted as a self-contained document that outlines the nature of the construction project and as applicable, include the following information:

- a) Detail the scope of the works to be completed including details of the various stages, e.g. demolition, excavation, construction etc. and the duration of each stage.
- b) Identify local traffic routes to be used by construction vehicles.
- c) Identify ways to manage construction works to address impacts on local traffic routes.
- d) Identify other developments that may be occurring in the area and identify ways to minimise the cumulative traffic impact of these developments. Should other developments be occurring in close proximity (500m or in the same street) to the subject site, the developer/builder is to liaise fortnightly with the other developers/builders undertaking work in the area in order to minimise the cumulative traffic and parking impacts of the developments.
- e) Detail how construction workers will travel to and from the site and parking arrangements for those that drive.
- f) Identify any proposed road closures, temporary traffic routes, loss of pedestrian or cyclist access or reversing manoeuvres onto a public road and provide Traffic Control Plans (TCPs) prepared by an accredited RMS Red or Orange card holder to manage these temporary changes.
- g) Detail the size (including dimensions), numbers and frequency of arrival of the construction vehicles that will service the site for each stage of works.
- h) Provide for the standing of vehicles during construction.
- i) If construction vehicles are to be accommodated on the site, provide a scaled drawing showing where these vehicles will stand and the vehicle swept path to show that these vehicles can access and egress the site in a forward direction (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
- j) If trucks are to be accommodated on Council property, provide a scaled drawing showing the location of any proposed Works Zone (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
- k) Show the location of any site sheds and any anticipated use of cranes and concrete pumps and identify the relevant permits that will be required.
- l) If a crane/s are to be accommodated on site, detail how the crane/s will be erected and removed, including the location, number and size of vehicles involved in the erection/removal of the crane/s, the duration of the operation and the proposed day and times, any full or partial road closures required to erect or

- remove the crane/s and appropriate Traffic Control Plans (TCPs) prepared by an approved RMS Red or Orange Card holder.
- m) Make provision for all materials, plant, etc. to be stored within the development site at all times during construction.
 - n) State that any oversized vehicles proposed to operate on Council property (including Council approved Works Zones) will attain a Permit to Stand Plant on each occasion (Note: oversized vehicles are vehicles longer than 7.5m or heavier than 4.5T.)
 - o) Show the location of any proposed excavation and estimated volumes.
 - p) When demolition, excavation and construction works are to be undertaken on school days, all vehicular movements associated with this work shall only be undertaken between the hours of 9.30am and 2.30pm, in order to minimise disruption to the traffic network during school pick up and drop off times.
 - q) Show the location of all Tree Protection (Exclusion) zones (Note: storage of building materials or access through Reserve will not be permitted without prior approval by Council).

Note: A minimum of eight weeks will be required for assessment. Work must not commence until the Construction Management Plan is approved. Failure to comply with this condition may result in fines and proceedings to stop work.

D.12 Work (Construction) Zone – Approval & 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.

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.

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*.

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.

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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.

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) Piering;
- (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 separate penalty infringement notice or prosecution.

Note: The delivery and removal of plant, equipment and machinery associated with wide loads subject to RTA and 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 2000*.

Note: EPA Guidelines can be downloaded from <http://www.epa.nsw.gov.au/noise/nglg.htm>.

Note: see http://www.epa.nsw.gov.au/resources/ci_build_sheet7.pdf

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.

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.

E.8 Support of Adjoining Land and Buildings

A person must not to 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*.

E.9 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.

E.10 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.

E.11 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 building are constructed to minimum heights for flood protection and maximum heights to protect views and the amenity of neighbours.

E.12 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 positions 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.

E.13 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.

E.14 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 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 down loaded free of charge from Council's web site 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.workcover.nsw.gov.au and www.epa.nsw.gov.au . Other specific condition 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.

E.15 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.

E.16 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.

E.17 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

E.18 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.

E.19 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.

E.20 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.

E.21 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.

E.22 Water Hammer

All construction of the attic level ensuite shall be undertaken in accordance with the Plumbing Code of Australia and AS/NZS Standard 3500. Particular attention is to be taken to ensure that all pipes:

- a) are installed to minimise noise,
- b) secured and installed so that 'water hammer' does not occur, and
- c) the general operation of the ensuite does not create noise nuisance to adjoining residents.

E.23 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*.

E.24 Compliance with Construction Management Plan

All development activities and traffic movements must be carried out in accordance with the approved Construction Management Plan (CMP). All controls in the CMP

must be maintained at all times. A copy of the CMP must be kept on-site at all times and made available to the Principal Certifier or Council on request.

Note: Irrespective of the provisions of the Construction Management Plan the provisions of traffic and parking legislation prevails.

E.25 Maintenance of Vehicular and Pedestrian Safety and Access

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:

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

E.26 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.

E.27 Support of Adjoining Land Owners

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*.

E.28 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 mean 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*.

E.29 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:

- h) 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.
- i) 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.
- j) 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.
- k) 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.
- l) 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.
- m) Stormwater drainage Systems prior to back filling over pipes confirming location, height and capacity of works.
- n) 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 building are constructed to minimum heights for flood protection and maximum heights to protect views and the amenity of neighbours.

E.30 Compliance with Council's Specification for Roadworks, Drainage and Miscellaneous Road Works

All work carried out on assets which are under Council ownership or will revert to the ownership, care, control or management of Council in connection with the *development* to which this consent relates must comply with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012).

The Owner, Principal Contractor or Owner-builder must meet all costs associated with such works.

This condition does not set aside the need to obtain relevant approvals under the *Roads Act 1993* or *Local Government Act 1993* for works within roads and other public places.

Note: A copy of Council's *Specification for Roadworks, Drainage and Miscellaneous Works* can be downloaded from Council's website www.woollahra.nsw.gov.au

E.31 Replacement of Sandstone Kerb or Gutter

Where existing sandstone kerb or gutter is to be replaced in concrete, the sandstone remains the property of Council. The stones are to be removed and handled in such a manner so as not to cause any damage to the sandstone.

The stones must be delivered on pallets between 7am to 4pm, Monday to Friday, by the Principal Contractor or Owner to Woollahra Council's Works Depot. Prior to delivery contact Civil Operations on 9391 7973.

E.32 Stormwater Drainage System Benefiting Council

All new footings for buildings and/or other structures located over and adjacent to Council's stormwater drainage system traversing the site shall be constructed outside

of the zone of influence of the Council's pipeline. Footings must extend to at least 100mm below the invert of the Council's pipe unless the footings are to be placed on competent bedrock and shall be generally prepared in accordance with the following supporting documentation:

- Construction Methodology Report, prepared by Structure Consulting Engineers, referenced 22S0023, rev 2, dated 6 Jun 2023.
- Construction Methodology Sketches, prepared by Structure Consulting Engineers,
 - referenced 22S0023_CM_01, dated 8 May 2023;
 - referenced 22S0023_CM_02 to CM_15, dated 6 Jun 2023.

The Principal Contractor or Owner-builder must locate all stormwater drainage systems without causing any damage to the public system and ensure its protection. The Owner, Principal Contractor or Owner-builder must not obstruct or otherwise remove, disconnect or render inoperable the stormwater drainage system. In the event of a Council drainage pipeline being damaged during construction, all work in the vicinity of the area shall cease and the Principal Certifying Authority and Council shall be contacted immediately for advice. Any damage caused to a Council drainage system must be immediately repaired in full as directed, and at no cost to Council.

This condition does not set aside the need to obtain relevant approvals under the *Roads Act 1993* or *Local Government Act 1993* for works within roads and other public places.

Note: The *Local Government Act 1993* provides:

"59A Ownership of water supply, sewerage and stormwater drainage works

- a. Subject to this Division, a council is the owner of all works of water supply, sewerage and stormwater drainage installed in or on land by the council (whether or not the land is owned by the council).
- b. A council may operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that are necessary or appropriate to any of its works to ensure that, in the opinion of the council, the works are used in an efficient manner for the purposes for which the works were installed."

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.

F.2 Swimming and Spa Pools – Permanent Child Resistant Barriers and other Matters

Prior to filling any swimming pool, as defined by the *Swimming Pools Act 1992*:

- a) Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia.
- b) The swimming pool must be registered in accordance with Section 30B of the *Swimming Pools Act 1992* on the NSW Government Swimming Pool Register at www.swimmingpoolregister.nsw.gov.au.

- c) The *Principal Contractor* or *owner* must either obtain a 'Certificate of Compliance' issued pursuant to Section 22D of the *Swimming Pools Act* 1992 or an appropriate Occupation Certificate authorising use of the swimming pool.
- d) Public Pools must comply with the NSW Health Public Swimming Pool and Spa Pool Guidelines in force at that time and private pools are encouraged to comply with the same standards as applicable.
- e) Water recirculation and filtration systems must be installed in compliance with AS 1926.3-2003: *Swimming pool safety - Water recirculation and filtration systems*.

Backwash must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996:

- a) Water recirculation and filtration systems must be connected to the electricity supply by a timer that limits the systems operation such that it does not operate:
- b) Before 8 am or after 8 pm on any Sunday or public holiday or before 7 am or after 8 pm on any other day.

Note: The NSW Health Public Swimming Pool and Spa Pool Guidelines can be down loaded free from: <http://www.health.nsw.gov.au/public-health/ehb/general/pools/poolguidelines.pdf>

F.3 Swimming Pool Fencing

Swimming Pool Fencing is to be constructed in accordance with AS1926-2012 Australian Standard Swimming Pool Safety Part 1 – *Safety Barriers for Swimming Pools*.

Note: Pools commenced or completed after May 2013 must meet Part 3.9.6 of the BCA AS1926.1-2012 and AS1926.2-2012

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.

F.5 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.

F.6 Commissioning and Certification of Public Infrastructure Works

The Principal Contractor or Owner-builder must submit, to the satisfaction of Council as the assets owner, for the following documentations:

- a) Certification from the Chartered Civil Engineer certifying that the new Council's stormwater drainage works have been executed in compliance with the approved drawings and Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012);
- b) Certification from the Chartered Civil Engineer certifying that all footings and structures over and adjacent to Council's pipelines have been constructed at least 100mm below the invert of the Council's pipe or these footings are placed on competent bedrock.
- c) A full works-as-executed drawing of the as-built stormwater drainage system (dimensions, grades, materials, invert levels) prepared by a registered surveyor verifying all as-built levels in red on the approved construction drawings;
- d) Closed circuit television (CCTV) provided on DVD format of the as-built stormwater drainage system. The camera and its operation shall comply with the following: -
 - 1. The internal surface of the drainage pipe shall be viewed and recorded in a clear and concise manner.
 - 2. The CCTV camera used shall be capable to pan, tilt and turning at right angles to the pipe axis over an entire vertical circle to view the conduit joints.
 - 3. Distance from the manholes shall be accurately measured and displayed on the video.
 - 4. All pipe joints and defects are to be inspected by stopping movement and panning the camera to fully inspect the joint and/or defect.

The Occupation Certificate must not be issued until Council's Assets Engineer is satisfied that the works have been satisfactorily completed. In this regard, a written acknowledgment must be obtained from Council as the assets owner (attesting to

this condition being appropriately satisfied) and submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

F.7 Certification – Structures / Excavations near Council's Drainage Pipes

Prior to the issue of any Occupation Certificate, for structures over and adjacent to the Council's stormwater drainage pipelines within the site, a suitably qualified and experienced Chartered Structural Engineer must certify that all footings and structures over and adjacent to Council's pipelines have been constructed at least 100mm below the invert of the Council's pipe unless the footings are placed on competent bedrock.

Certification is to be provided to the Principal Certifying Authority, with a copy provided to Council, prior to issue of any Occupation Certificate.

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 Fulfilment of BASIX Commitments – clause 154B of the *Regulation*

All BASIX commitments must be effected in accordance with the BASIX Certificate No.A466471.

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."

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.

H.3 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.

H.4 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 or obtained from Council's customer service centre.

H.5 Dilapidation Report for Public Infrastructure Works

The Principal Contractor must submit a follow up dilapidation report, prepared by a professional engineer, on Council's infrastructure within and near the development site to Council upon completion of the work.

The Final Occupation Certificate must not be issued until Council's Civil Works Engineer is satisfied that the works have been satisfactorily completed and the Principal Certifier has been provided with correspondence from Council to this effect.

The dilapidation report must include:

- a) photographs showing any existing damage to the road pavement fronting the site,
- b) photographs showing any existing damage to the kerb and gutter fronting the site,
- c) photographs showing any existing damage to the footway including footpath pavement fronting the site,
- d) photographs showing any existing damage to retaining walls within the footway or road,

- e) closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
- f) the full name and signature of the professional engineer.

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.

The dilapidation report must specify (with supporting photographic/DVD evidence) the exact location and extent of any damaged or defective public infrastructure. If the required report is not submitted then Council will assume any damage to any infrastructure in the immediate vicinity of the site was caused by the principle contractor and Owner carrying out work under this consent.

Note: If the Principal Contractor fails to submit the dilapidation 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.

H.6 Positive Covenant & Works-As-Executed Certification of Stormwater System

Prior to issue of any Occupation Certificate, certification by a Chartered Professional Civil Engineer on all stormwater drainage works, including the mechanical flood barrier, rainwater tank and pump-out system, with works-as-executed drawings prepared by a registered surveyor detailing:

- a) compliance with conditions of development consent relating to stormwater;
- b) that the structural adequacy of the following stormwater structures:
 - the mechanical flood barrier;
 - the rainwater tank; and
 - the pump-out system.
- c) that the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations;
- d) pipe invert levels and surface levels to Australian Height Datum; and
- e) contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

A positive covenant pursuant to section 88E of the *Conveyancing Act 1919* must be created on the title of the subject property, providing for the on-going maintenance of mechanical flood barrier, rainwater tank and pump-out system, including any pumps and sumps incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered with the NSW Land Registry Services. The property owner must reimburse Council's reasonable expenses incurred in the drafting, negotiation and registration of the covenant

Note: The required wording of the Instrument can be downloaded from Council's website www.woollahra.nsw.gov.au. The PC must supply a copy of the WAE plans to Council together with the Occupation Certificate.

Note: The Occupation Certificate must not be issued until this condition has been satisfied.

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 BASIX Certificate No.A466471.

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.

I.2 Outdoor Lighting – Residential

Outdoor lighting must comply with AS 4282-1997: Control of the obtrusive effects of outdoor lighting. The maximum luminous intensity from each luminaire must not exceed the level 1 control relevant under table 2.2 of AS 4282. The maximum illuminance and the threshold limits must be in accordance with Table 2.1 of AS 4282.

This condition has been imposed to protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.

Note: This condition has been imposed to control the obtrusive effects of outdoor lighting.

I.3 Swimming and Spa Pools – Maintenance

Swimming and Spa Pools must be maintained:

- a) In compliance with the *Swimming Pools Act 1992* and the Building Code of Australia with regard to the provision of child-resistant barriers and resuscitation signs;
- b) In compliance with the NSW Health “*Public Swimming Pool and Spa Pool Guidelines*” in force at that time. Private pools are encouraged to comply with the same standards as applicable;
- c) In compliance with AS 1926.3-2003:Swimming pool safety - Water recirculation and filtration systems ;
- d) With backwash being discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996, and
- e) With a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
 - Before 8 am or after 8 pm on any Sunday or public holiday, or
 - Before 7 am or after 8 pm on any other day.

Note: Child-resistant barriers, resuscitation signs, recirculation and filtration systems and controls systems require regular maintenance to ensure that life safety, health and amenity standards are maintained.

Note: The NSW Health Public Swimming Pool and Spa Pool Guidelines can be down loaded free from: <http://www.health.nsw.gov.au/public-health/ehb/general/pools/poolguidelines.pdf>

I.4 Noise from Mechanical Plant and Equipment

The noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the *background noise level*. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed *background noise level* at any time.

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 $L_{A90, 15 \text{ minute}}$ level measured by a sound level meter.

This condition has been imposed to protect the amenity of the neighbourhood.

Note: Words in this condition have the same meaning as in the:

NSW Industrial Noise Policy

(http://www.environment.nsw.gov.au/resources/ind_noise.pdf)

ISBN 0 7313 2715 2, dated January 2000, and

Noise Guide for Local Government (<http://www.environment.nsw.gov.au/noise/nglg.htm>)

ISBN 1741370671, dated December 2004.

1.5 Noise Control

The use of the premises must not give rise to the transmission of *offensive noise* to any place of different occupancy. *Offensive noise* is defined in the *Protection of the Environment Operations Act 1997*.

This condition has been imposed to protect the amenity of the neighbourhood.

Note: Council will generally enforce this condition in accordance with the *Noise Guide for Local Government* (<http://www.environment.nsw.gov.au/noise/nglg.htm>) and the *Industrial Noise Guidelines* (<http://www.environment.nsw.gov.au/noise/industrial.htm>) published by the Department of Environment and Conservation. Other state government authorities also regulate the *Protection of the Environment Operations Act 1997*.

Useful links:

Community Justice Centres—free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).

Department of Environment and Conservation NSW, Noise Policy Section web page (www.environment.nsw.gov.au/noise).

New South Wales Government Legislation home page for access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* (www.legislation.nsw.gov.au).

Australian Acoustical Society—professional society of noise-related professionals (www.acoustics.asn.au/index.php).

Association of Australian Acoustical Consultants—professional society of noise related professionals (www.aaac.org.au).

Department of Gaming and Racing - (www.dgr.nsw.gov.au).

1.6 Ongoing Maintenance of the Stormwater Drainage System

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

- a) permit stormwater to be temporarily retained and detained by the rainwater tank and pumpout 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 systems 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 systems or elements thereof without prior consent in writing of the Council and not interfere with the systems 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.

1.7 Ongoing Maintenance of the Flood Protection Measures and Overland Flow Path

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

- a) Not take any act, matter or thing which would prevent the overland flow path and flood protection measures (e.g. mechanical flood barriers) from operating in a safe and efficient manner.
- b) Not allow any structure to encroach upon the overland flow path.
- c) Not make any alterations to the flood protection measures and overland flow path or elements thereof without prior consent in writing of the Council and not interfere with the flood protection measures and overland flow path or by its act or omission cause it to be interfered with so that it does not function or operate properly;
- d) 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;
- e) Comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time reasonably stated in the notice;
- f) 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;
- g) Indemnify the Council against all claims or actions and costs arising from those claims or actions which Council may suffer or incur in respect of the flood protection measures and overland flow path and caused by an act or omission by the Owners in respect of the Owner's obligations under this condition.

Note: This condition has been imposed to ensure that owners are aware of require maintenance requirements for the flood protection measures and overland flow path.

Note: This condition is supplementary to the owner(s) obligations and Council's rights under any positive covenant.

I.8 Landscaping

- (a) The plantings referred to in condition C.13(b) must be planted and maintained on the site to ensure the preservation of the landscape character of the area.
- (b) Any plant required to be planted under this consent is to be maintained in a healthy and vigorous condition until it attains a height of 5 metres or a spread of 3 metres, whereby it will be protected by Woollahra DCP 2015, Chapter E3–Tree Management. If the replacement plant is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council's DCP, it must be replaced with another of the same species which complies with the criteria outlined below.
- (c) Landscaping in accordance with the landscape plans approved by this consent is to be maintained on the site at all times.

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 enforce 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.

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

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.

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

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 or call 133 220.

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 or call 131 050.

K.6 Asbestos Removal, Repair or Disturbance

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from SafeWork NSW.

Before starting work, a work site-specific permit approving each asbestos project must be obtained from SafeWork NSW. A permit will not be granted without a current SafeWork licence.

All removal, repair or disturbance of or to asbestos material must comply with:

- a) *Work Health and Safety Act 2011*,
- b) *Work Health and Safety Regulation 2017*,
- c) SafeWork NSW "Code of Practice: How to Safely Remove Asbestos" (2016), and
- d) SafeWork NSW "Code of Practice: How to Manage and Control Asbestos in the Workplace" (2016).

Note: For more information go to the SafeWork NSW website on asbestos www.safework.nsw.gov.au/health-and-safety/safety-topics-a-z/asbestos, and www.safework.nsw.gov.au/law-and-policy/legislation-and-codes/codes-of-practice or call 131 050.

K.7 Lead Paint

It is beyond the scope of this consent to provide detailed information about dealing with lead paint. Painters working in an area containing lead-based paint should refer to Australian Standard AS 4361.1–1995: *Guide to Lead Paint Management—Industrial Applications*, or AS 4361.2–1998: *Guide to Lead Paint Management—Residential and Commercial Buildings*.

Industrial paints may contain lead. Lead is used in some specialised sign-writing and artist paints, and road marking paints, and anti-corrosive paints. Lead was a major ingredient in commercial and residential paints from the late 1800s to 1970. Most Australian commercial buildings and residential homes built before 1970 contain lead paint. These paints were used both inside and outside buildings.

Lead particles are released when old lead paint flakes and peels and collects as dust in ceiling, wall and floor voids. If dust is generated it must be contained. If runoff contains lead particles it must be contained. Lead is extremely hazardous, and stripping of lead-based paint and the disposal of contaminated waste must be carried out with all care. Lead is a cumulative poison and even small levels in the body can have severe effects.

K.8 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

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 or call 1800 990 777.

K.9 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Ms F Stano, Assessment Officer, on (02) 9391 7000.

However, if you wish to pursue your rights of appeal in the Land and Environment Court you are advised that Council generally seeks resolution of such appeals through a section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed commissioner having the full authority to completely determine the matter at the conference.

K.10 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

K.11 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.

K.12 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 or call 133 220.

K.13 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 or call Council on 9391 7000 for further advice.

K.14 Dilapidation Report

Please note the following in relation to the condition for a dilapidation report:

- a) The dilapidation report will be made available to affected property owners on requested and may be used by them in the event of a dispute relating to damage allegedly due to the carrying out of the development.
- b) This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.
- c) Council will not be held responsible for any damage which may be caused to adjoining buildings as a consequence of the development being carried out.
- d) Council will not become directly involved in disputes between the developer, its contractors and the owners of neighbouring buildings.
- e) In the event that access for undertaking the dilapidation survey is denied the Applicant is to demonstrate in writing to the satisfaction of the Principal Certifier that all reasonable steps were taken to obtain access to the adjoining property. The dilapidation report will need to be based on a survey of what can be observed externally.

K.15 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.

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.