



Issued: 3 September 2021 12:48 PM

JUDGMENT/ORDER

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2021/00081273

TITLE OF PROCEEDINGS

First Applicant	Castle Constructions Pty Ltd ACN 001602188
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First Respondent	Ku-ring-gai Council ABN 86408856411
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DATE OF JUDGMENT/ORDER

Date made or given	3 September 2021
Date entered	3 September 2021

TERMS OF JUDGMENT/ORDER

The Court orders:

- (1) The Applicant's written request prepared pursuant to the provisions of cl 4.6 of KLEP and seeking a variation to the height of building development standard in cl 4.3 of the KLEP is upheld.
- (2) The Appeal is upheld.
- (3) Development consent is granted to DA 0424/20 (as amended) for the demolition of existing pool and construction of a new dwelling with pool, front fence and associated works at 42 Northcote Avenue, Killara NSW 2071, subject to the conditions in Annexure "A".
- (4) The Respondent is directed to upload the development consent to the Planning Portal within 7 days of this judgment.

SEAL AND SIGNATURE



Signature	S. Froh
Capacity	Registrar
Date	3 September 2021

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

FURTHER DETAILS ABOUT Applicant(s)

First Applicant
Name Castle Constructions Pty Ltd
ACN 001602188
Address Suite 35
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NORTHBRIDGE NSW 2063
Telephone
Fax
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Client reference

Legal representative for plaintiffs

Name GEORGE GERMANOS
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Address S G01 Ground floor
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FURTHER DETAILS ABOUT Respondent(s)

First Respondent

Name Ku-ring-gai Council
ABN 86408856411
Address 818 Pacific Highway
GORDON NSW 2072
Frequent User Identifier KURINMC

ATTACHMENTS TO ORDERS

(81273.21 Chilcott C Annexure A.pdf)

[attach.]

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA0424/20

Development: Demolition of existing pool and construction of a new dwelling with pool, front fence and associated works in Heritage Conservation Area

Site: 42 Northcote Avenue Killara NSW 2071

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

Date of determination: 03 September 2021

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

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the "applicant" means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the "site", means the land known as 42 Northcote Avenue Killara NSW 2071.

The conditions of consent are as follows:

Conditions that identify the approved plans

1. Approved architectural plans and documentation (new development)
2. Inconsistency between documents

Conditions to be satisfied prior to demolition, excavation or construction

3. Asbestos works
4. Notice of commencement
5. Notification of builder's details
6. Dilapidation photos (public infrastructure)
7. Dilapidation survey and report (private property)
8. Sediment controls
9. Tree protection fencing
10. Tree protective fencing type galvanised mesh
11. Tree protection signage

12. Tree protection mulching
13. Ground protection – avoiding soil compaction
14. Inspection of tree protection measures
15. Project arborist
16. Construction waste management plan

Conditions to be satisfied prior to the issue of the Construction Certificate

17. Compliance with BASIX Certificate
18. Statement of compliance with Australian Standards
19. Driveway crossing levels
20. Steep vehicular access
21. Underground services
22. Prohibition of external service pipes and the like
23. Long service levy
24. Builder's indemnity insurance

Conditions to be satisfied prior to the issue of any construction certificate or prior to demolition, excavation or building works (whichever comes first)

25. Infrastructure damage security bond and inspection fee
26. Section 7.12 development contributions (<\$10M standard condition)
27. Construction Certificate plans

Conditions to be satisfied during the demolition, excavation and construction phases

28. Prescribed conditions
29. Hours of work
30. Road opening permit
31. Road reserve safety
32. Site fencing
33. Site notice
34. Construction signage
35. Approved plans to be on site
36. Toilet facilities
37. Garbage receptacle
38. Services
39. Erosion control
40. Arborist's inspection and reporting
41. Landscape works near trees
42. Cutting of tree roots and branches
43. Retention of tree roots
44. Approved tree works
45. No storage of materials beneath trees
46. Removal of refuse
47. On site retention of Waste Dockets
48. Maintenance of site
49. Compliance with submitted geotechnical report
50. Control of construction noise (Australian Standard)
51. Vibration
52. Dust control
53. Post-construction dilapidation report
54. External walls and cladding flammability

Conditions to be satisfied prior to the issue of an Occupation Certificate

55. Compliance with BASIX Certificate
56. Certification of drainage works
57. WAE plans for stormwater management and disposal

- 58. Retention and re-use positive covenant
- 59. OSD positive covenant/restriction
- 60. On-site detention system marker plate
- 61. Location of plant
- 62. Garbage and recycling facilities - residential premises
- 63. Swimming pool (part 1)
- 64. Reinstatement of redundant crossings and completion of infrastructure works
- 65. Correct installation of gates
- 66. Completion of landscape works

Conditions to be satisfied at all times

- 67. Outdoor lighting
- 68. Noise Control
- 69. Swimming pool (part 2)

The conditions of consent are as follows:

CONDITIONS THAT IDENTIFY APPROVED PLANS:

1. Approved architectural plans and documentation (alterations and additions)

The development must be carried out in accordance with work shown in colour on the plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this Development Consent.

Plans				
Dwg no.	Issue	Date	Name	Drawn by
Architectural plans				
DA-0400	K	29/07/21	Site Plan	David White Architects Pty Ltd
DA-1100	M	16/07/21	Lower Ground Plan	David White Architects Pty Ltd
DA-1101	M	29/07/21	Ground Floor Plan	David White Architects Pty Ltd
DA-1102	M	29/07/21	First Floor Plan	David White Architects Pty Ltd
DA-1103	H	29/07/21	Roof Plan	David White Architects Pty Ltd
DA-1200	J	29/07/21	Elevations	David White Architects Pty Ltd
DA-1201	J	29/07/21	Elevations	David White Architects Pty Ltd
DA-1203	C	29/07/21	Front Elevation Streetscape Massing Showing Houses No 36 (Side Elevation), 38, 42, 44 & 46, Front Fence Detail	David White Architects Pty Ltd
DA-1300	I	29/07/21	Sections	David White Architects Pty Ltd
DA-2040	G	02/08/21	Amended Schedule of Finishes	David White Architects Pty Ltd
Landscape plans				
LP – 01 - C	C	01/06/21	Landscaping Plan	Selena Hannan Landscape Design
-----	-----	29/07/21	42 Northcote Avenue Driveway/East Elevation - Proposed Planting	Selena Hannan Landscape Design
-----	-----	03/08/21	42 Northcote Avenue South Elevation - Proposed Planting	Selena Hannan Landscape Design
Stormwater management plans				
C1	D	29/09/20	Cover Sheet & Notes	ACOR Consultants (CC) Pty Ltd

C2	D	29/09/20	Stormwater Management Plan - Part 1	ACOR Consultants (CC) Pty Ltd
C3	D	29/09/20	Stormwater Management Plan - Part 2	ACOR Consultants (CC) Pty Ltd
C4	D	29/09/20	Stormwater Management Details Sheet No. 1	ACOR Consultants (CC) Pty Ltd
C5	D	29/09/20	Stormwater Management Details Sheet No. 2	ACOR Consultants (CC) Pty Ltd
C6	D	29/09/20	Erosion & Sediment Control Plan	ACOR Consultants (CC) Pty Ltd
C7	D	29/09/20	Erosion & Sediment Control Notes	ACOR Consultants (CC) Pty Ltd
C8	D	29/09/20	Erosion & Sediment Control Detail Sheet	ACOR Consultants (CC) Pty Ltd

Documents				
Ref. no.	Issue	Date	Name / Type	Prepared by
-----	-----	21/09/20	Arboriculture Impact Statement	Selena Hannan Landscape Design
1 139 836 S	-----	07/10/20	BASIX Certificate	Marc Kiho
333 97Z rpt	-----	02/09/20	Geotechnical Investigation	JK Geotechnics
-----	-----	03/08/21	Amended Statement of Heritage Impact	GBA Heritage
-----	-----	June 2021	Heritage Impact Commentary	GBA Heritage
-----	-----	25/05/21	Mechanical Design Report	Colin Shears and Associates Pty Ltd
2117-L1	-----	26/05/21	Shoring and Retaining Methodology	Austrut Pty Ltd Consulting Engineers

Reason: To ensure that the development is in accordance with the Development Consent.

2. Inconsistency between documents

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this Development Consent prevail.

Reason: To ensure that the development is in accordance with the Development Consent.

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION:

3. Asbestos works

All work involving asbestos products and materials, including asbestos-cement-sheeting (ie. Fibro), must be carried out in accordance with the guidelines for asbestos work published by WorkCover Authority of NSW.

Reason: To ensure public safety.

4. Notice of commencement

At least 48 hours prior to the commencement of any demolition, excavation or building works, a notice of commencement of building works or subdivision lodgement form and appointment of the Principal Certifier form shall be submitted to Council.

Reason: Statutory requirement.

5. Notification of builder's details

Prior to the commencement of any works, the Principal Certifier shall be notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.

Reason: Statutory requirement.

6. Dilapidation photos (public infrastructure)

Prior to the commencement of any works, the Applicant must obtain a dilapidation report on the public infrastructure and a photographic record of the visible condition of the existing public infrastructure **over the full site frontage** (in colour - preferably saved to USB in 'jpg' format). The dilapidation report and photographic record shall be submitted to Council and the Principal Certifier prior to the commencement of any works. The photographic record must include detail of:

- the existing footpath
- the existing kerb and gutter
- the existing full road surface between kerbs
- the existing verge area
- the existing driveway and layback where to be retained
- any existing drainage infrastructure, including pits, lintels and grates.

Particular attention must be paid to accurately recording any pre-developed damaged areas on the aforementioned infrastructure so that Council is fully informed when assessing damage to public infrastructure caused as a result of the development (which is not to be repaired by the applicant as part of the development). The Applicant may be held liable to all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded and demonstrated under the requirements of this condition prior to the commencement of any works.

Reason: To record the condition of public infrastructure before any works commence.

7. Dilapidation survey and report (private property)

Prior to the commencement of any works, the Applicant must obtain a dilapidation report on private properties **38 Northcote Ave and 44 Northcote Ave** and the Principal Certifier shall be satisfied that a dilapidation report on the visible and structural condition of all structures on these properties has been completed and submitted to Council:

The dilapidation report must include a photographic record of these adjoining properties detailing their physical condition, both internally and externally, including such items as walls ceilings, roof and structural members. The report must be completed by a consulting structural/geotechnical engineer as determined necessary by that professional based on the excavations for the proposal and the recommendations of the submitted geotechnical report.

In the event that access for undertaking the dilapidation survey is denied by a property owner, the Applicant must demonstrate in writing to the satisfaction of the Principal Certifier that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

Note: A copy of the dilapidation report is to be provided to Council prior to the commencement of any works. The dilapidation report is for record keeping purposes only and may be used by the Applicant or affected property owner to assist in any civil action required to resolve any dispute over damage to adjoining properties arising from works.

Reason: To record the structural condition of likely affected properties before works commence.

8. Sediment controls

Prior to any works commencing, sediment and erosion control measures shall be installed along the contour immediately downslope of any future disturbed areas.

The form of the sediment controls to be installed on the site shall be determined by reference to the Landcom manual '*Managing Urban Stormwater: Soils and Construction*'. The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site is fully stabilised. Sediment shall be removed from the sediment and erosion control measures following each heavy or prolonged rainfall period.

Reason: To protect and enhance the natural environment.

9. Tree protection fencing

Prior to the commencement of any works, the tree protection zone of the listed trees is to be fenced off at the specified radius from the trunk/s to prevent any activities or storage of material within the fenced area. The fence/s shall be maintained intact until the completion of all demolition/building work.

Tree/Location	Radius in
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	metres
Trees 18 & 19 <i>Magnolia x soulangiana</i> (Magnolia)/front setback	3m

Reason: To protect existing trees.

10. Tree protective fencing type galvanised mesh

Prior to the commencement of any works, tree protection fencing shall be constructed of galvanised pipe at 2.4 metres spacing and connected by securely attached chain mesh fencing to a minimum height of 1.8 metres.

Reason: To protect existing trees.

11. Tree protection signage

Prior to the commencement of any works, tree protection signage is to be attached to the tree protection fencing, displayed in a prominent position and repeated at 10 metres intervals or closer where the fence changes direction. Each sign shall contain, in a clearly legible form, the name, address, and telephone number of the developer/builder and project arborist as well as the words:

- Tree protection zone/No access.
- This fence has been installed to prevent damage to the tree/s and their growing environment both above and below ground.

Reason: To protect existing trees.

12. Tree protection mulching

Prior to the commencement of any works, the tree protection zone is to be mulched to a depth of 100mm with composted organic material.

The mulch is to be replenished so as to be consistent with the above requirement throughout the duration of construction works.

Reason: To protect existing trees.

13. Ground protection - avoiding soil compaction

Prior to the commencement of any works, temporary measures, to avoid root damage and soil compaction, are to be installed within the eastern boundary of the site as may be recommended by an arborist with a minimum AQF Level 5 qualification with a minimum of five years' experience for the following listed tree/s:

Tree/Location
Trees 2A & 2B, 3, 4, 6, 7, 8, 9, 11, 12, 13, 16, 17A 17B/ ground protection between the western side boundary and the footings and external wall of the proposed dwelling

Reason: To protect existing trees.

14. Inspection of tree protection measures

Upon installation of the required tree protection measures, an inspection is to be conducted by the project arborist or the Principal Certifier to verify that tree protection measures comply with all relevant conditions of this Development Consent.

Reason: To protect existing trees.

15. Project arborist

Prior to the commencement of any works, a project arborist shall be engaged to ensure all tree protection measures and works are carried out in accordance with the conditions of this Development Consent.

The project arborist shall have a minimum AQF Level 5 qualification with a minimum of 5 years' experience. Details of the arborist including name, business name and contact details shall be provided to the Principal Certifier with a copy provided to Council.

Reason: To protect of existing trees.

16. Construction waste management plan

Prior to the commencement of any works, the Principal Certifier shall be satisfied that a waste management plan, prepared by a suitably qualified person, has been prepared in accordance with the waste management controls in *Ku-ring-gai Development Control Plan* (the DCP).

The plan shall address all issues identified in the DCP, including but not limited to: the estimated volume of waste and method for disposal for the construction and operation phases of the development.

Note: The plan shall be provided to the Principal Certifier.

Reason: To ensure appropriate management of construction waste.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE:**17. Compliance with BASIX Certificate**

Prior to the issue of any Construction Certificate, the Certifier shall be satisfied that all commitments listed in the approved BASIX Certificate (referred to under Condition 2) are detailed on the plans forming the Construction Certificate.

Reason: Statutory requirement.

18. Statement of compliance with Australian Standards

The demolition work shall comply with the provisions of Australian Standard AS2601: 2001 *The Demolition of Structures*. The applicant must provide work plans required by AS2601: 2001 and a written statement from a suitably qualified person that the proposal contained in the work plan comply with the safety

requirements of the Standard. The work plan and the statement of compliance shall be submitted to the satisfaction of the Principal Certifier prior to the commencement of any works.

Reason: To ensure compliance with the Australian Standards.

19. Driveway crossing levels

Prior to issue of any Construction Certificate, driveway and associated footpath levels for any new, reconstructed or extended sections of driveway crossings between the property boundary and road alignment must be obtained from Council. Such levels are only able to be issued by Council under the *Roads Act 1993*. All footpath crossings, laybacks and driveways are to be constructed according to Council's specifications "Construction of Gutter Crossings and Footpath Crossings".

Specifications are issued with alignment levels after completing the necessary application form at Council's Customer Services counter and payment of the assessment fee. When completing the request for driveway levels application from Council, the Applicant must attach a copy of the relevant development application drawing which indicates the position and proposed level of the proposed driveway at the boundary alignment.

This development consent is for works wholly within the property. Development consent does not imply approval of footpath or driveway levels, materials or location within the road reserve, regardless of whether this information is shown on the development application plans. The grading of such footpaths or driveways outside the property shall comply with Council's standard requirements. The suitability of the grade of such paths or driveways inside the property is the sole responsibility of the Applicant and the required alignment levels fixed by Council may impact upon these levels.

The construction of footpaths and driveways outside the property in materials other than those approved by Council is not permitted.

Reason: To provide suitable vehicular access without disruption to pedestrians and vehicular traffic.

20. Steep vehicular access

Prior to the issue of any Construction Certificate, longitudinal driveway section plans are to be prepared by a qualified civil/traffic engineer and submitted to and approved by the Certifier. These profiles are to be at a recognised scale along the shortest edge of the proposed driveway, starting from the centreline of the frontage street carriageway through to the proposed parking stand. The traffic engineer must provide specific written certification on the plans that:

- all changes in grade (transitions) comply with Australian Standard 2890.1 - "Off-street car parking" - 2004 (refer clause 2.5.3) to prevent the scraping of the underside of vehicles
- maximum gradient of driveway does not exceed 25% (1 in 4).
- If a new driveway crossing is proposed in the road reserve, the longitudinal sections must incorporate the driveway crossing levels issued by Council under the terms of this Development Consent

Reason: To provide suitable vehicular access without disruption to pedestrians and vehicular traffic.

21. Underground services

All electrical services (existing and proposed) shall be undergrounded from the proposed building on the site to the appropriate power pole(s) or other connection point. Undergrounding of services must not disturb the root system of existing trees and shall be undertaken in accordance with the requirements of the relevant service provider. Documentary evidence that the relevant service provider has been consulted and that their requirements have been met is to be provided to the Certifier prior to the issue of any Construction Certificate. All electrical and telephone services to the subject property must be placed underground and any redundant poles are to be removed.

Reason: To provide infrastructure that facilitates the future improvement of the streetscape by location of service lines below ground.

22. Long service levy

A Construction Certificate shall not be issued until any long service levy payable under Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided to Council.

Reason: Statutory requirement.

23. Builder's indemnity insurance

The Applicant, builder, developer or person who does the work on this development, must arrange builder's indemnity insurance and submit the certificate of insurance in accordance with the requirements of Part 6 of the *Home Building Act 1989* to the Certifier for endorsement of the plans accompanying the Construction Certificate.

It is the responsibility of the Applicant, builder or developer to arrange the builder's indemnity insurance for residential building work over the value of \$20,000. The builder's indemnity insurance does not apply to commercial or industrial building work or to residential work valued at less than \$20,000, nor to work undertaken by persons holding an owner/builder's permit issued by the Department of Fair Trading (unless the owner/builder's property is sold within 7 years of the commencement of the work).

Reason: Statutory requirement.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE OR PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION (WHICHEVER COMES FIRST):

24. Infrastructure damage security bond and inspection fee

To ensure that any damage to Council property as a result of construction activity is rectified in a timely matter:

- (a) All work or activity undertaken pursuant to this development consent must be undertaken in a manner to avoid damage to Council property and must not jeopardise the safety of any person using or occupying the adjacent public areas.
- (b) The applicant, builder, developer or any person acting in reliance on this consent shall be responsible for making good any damage to Council property and for the removal from Council property of any waste bin, building materials, sediment, silt, or any other material or article.
- (c) The Infrastructure damage security bond and infrastructure inspection fee must be paid to Council by the applicant prior to both the issue of the Construction Certificate and the commencement of any earthworks or construction.
- (d) In consideration of payment of the infrastructure damage security bond and infrastructure inspection fee, Council will undertake such inspections of Council Property as Council considers necessary and will also undertake, on behalf of the applicant, such restoration work to Council property, if any, that Council considers necessary as a consequence of the development. The provision of such restoration work by the Council does not absolve any person of the responsibilities contained in (a) to (b) above. Restoration work to be undertaken by Council referred to in this condition is limited to work that can be undertaken by Council at a cost of not more than the Infrastructure damage security bond payable pursuant to this condition.
- (e) **Release of the bond** – Upon receipt of the Final Occupation Certificate, Council will undertake an inspection of Councils Infrastructure and release the bond if no damage is found.

For development relating to more than 2 dwellings, there will be a six months holding period after the receipt of the final occupation certificate, after which you may request Council to return any bond monies.

If there is damage found to Council property the bond will not be released until the damage has been rectified to Council's satisfaction.

- (f) In this condition:

“Council property” includes any road, footway, footpath paving, kerbing, guttering, crossings, street furniture, seats, letter bins, trees, shrubs, lawns, mounds, bushland, and similar structures or features on any road or public road within the meaning of the *Local Government Act 1993* (NSW) or any public place; and

“Infrastructure damage security bond and infrastructure inspection fee” means the Infrastructure damage security bond and infrastructure inspection fee as calculated in accordance with the Schedule of Fees & Charges adopted by Council as at the date of payment and the cost of any inspections required by the Council of Council property associated with this condition.

Reason: To maintain public infrastructure.

25. Section 7.12 Local infrastructure contributions

This development is subject to a development contribution calculated in accordance with Ku-ring-gai s94A Contributions Plan 2015, being a Contributions Plan in effect under the *Environmental Planning and Assessment Act*, in the amount of: **\$35,970.00** based on development costs of **\$3,597,000.00**, which shall be paid to Council to provide for additional local infrastructure improvements in accordance with the works programme listed in the s94A Contributions Plan. (Sections of the *Environmental Planning and Assessment Act* have been renumbered and former s94A is now known as s7.12).

The contribution specified above is subject to indexation and will continue to be indexed to reflect changes in the Consumer Price Index (All Groups Sydney) until paid in accordance with Ku-ring-gai s94A Contributions Plan 2015. Inflation is applied on all the Ku-ring-gai Contributions Plans on the day after the release of the Residential Property Prices Index by the Australian Bureau of Statistics (ABS). Prior to payment, please contact Council directly to verify the current contribution payable. Please see Council’s website for more information about inflation and paying contributions.

The monetary contribution shall be paid to Council:

- (a) prior to the issue of the first Construction Certificate where the development is for building work; or
- (b) prior to the works commencing where the development does not require a Construction Certificate.

Note: Copies of Council’s Contributions Plan can be viewed at Council Chambers at 818 Pacific Hwy Gordon or on Council’s website at www.kmc.nsw.gov.au <<http://www.kmc.nsw.gov.au>>.

Reason: To cater for the demand for additional infrastructure arising from cumulative developments in accordance with Ku-ring-gai S94A Contributions Plan 2015.

26. Construction Certificate plans

The Construction Certificate plans must be consistent with the approved plans and documents referred to in Condition No. 1 of this Development Consent.

Reason: To ensure that the works are carried out in accordance with the Development Consent.

CONDITIONS TO BE SATISFIED DURING THE DEMOLITION, EXCAVATION AND CONSTRUCTION PHASES:**27. Prescribed conditions**

The applicant shall comply with any relevant prescribed conditions of development consent under clause 98 of the *Environmental Planning and Assessment Regulation*. For the purposes of section 4.17 (11) (previously s80A (11)) of the *Environmental Planning and Assessment Act*, the following conditions are prescribed in relation to a development consent for development that involves any building work:

1. the work must be carried out in accordance with the requirements of the Building Code of Australia
2. 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 works commence
3. if the development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (a) protect and support the building, structure or work from possible damage from the excavation, and
 - (b) where necessary, underpin the building, structure or work to prevent any such damage.

Reason: Statutory requirement.

28. Hours of work

Demolition, construction work and deliveries of building material and equipment must not take place outside the hours of 7.00am to 5.00pm Monday to Friday and 8.00am to 12 noon Saturday. No work and no deliveries are to take place on Sundays and public holidays.

Excavation using machinery must be limited to between 7.00am and 5.00pm Monday to Friday, with a respite break of 45 minutes between 12 noon and 1.00pm. No excavation using machinery is to occur on Saturdays, Sundays or public holidays.

Where it is necessary for works to occur outside of these hours (ie) placement of concrete for large floor areas on large residential/commercial developments or where building processes require the use of oversized trucks and/or cranes that are restricted by Roads and Maritime Services (RMS) from travelling during daylight hours to deliver, erect or remove machinery, tower cranes, pre-cast panels, beams, tanks or service equipment to or from the site, approval for such activities will be subject to the issue of an "outside of hours works permit" from Council as well as notification of the surrounding properties likely to be affected by the proposed works.

Note: Failure to obtain a permit to work outside of the approved hours will result in on the spot fines being issued.

Reason: To ensure reasonable standards of amenity for occupants of neighbouring properties.

29. Road opening permit

The opening of any footway, roadway, road shoulder or any part of the road reserve shall not be carried out without a road opening permit being obtained from Council (upon payment of the required fee) beforehand.

Reason: Statutory requirement (*Roads Act 1993* Section 138) and to maintain the integrity of Council's infrastructure.

30. Road reserve safety

All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works. Construction materials must not be stored in the road reserve. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site. Where public infrastructure is damaged, repair works must be carried out when and as directed by Council officers. Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (2009) "Manual for Uniform Traffic Control Devices for Work on Roads". If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.

Reason: To ensure safe public footways and roadways during construction.

31. Site fencing

The site must be secured and fenced prior to works commencing. All excavation, demolition and construction works shall be properly guarded and protected with hoardings or fencing to prevent them from being dangerous to life and property.

If the work involved in the excavation, demolition or construction of the development is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or building involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place.

If necessary, a hoarding is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place (note that separate approval is required prior to the commencement of works to erect a hoarding or temporary fence on public property).

The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons on public property.

The site shall be secured/locked to prevent access at the end of each day.

Any hoarding, fence or awning is to be removed when the construction work has been completed.

Reason: To ensure public safety.

32. Site notice

A site notice shall be erected on the site prior to any work commencing and shall be displayed throughout the works period. The site notice must:

- be prominently displayed at the boundaries of the site for the purposes of informing the public that unauthorised entry to the site is not permitted
- display project details including, but not limited to the details of the builder, Principal Certifier and structural engineer
- be durable and weatherproof
- display the approved hours of work, the name of the site/project manager, the responsible managing company (if any), its address and 24 hour contact phone number for any inquiries, including construction/noise complaint are to be displayed on the site notice
- be mounted at height of 1.6 metres above natural ground on the perimeter hoardings/fencing and is to state that unauthorised entry to the site is not permitted

Reason: To ensure public safety and public information.

33. Construction signage

All construction signs must comply with the following requirements:

- are not to cover any mechanical ventilation inlet or outlet vent
- are not illuminated, self-illuminated or flashing at any time
- are located wholly within a property where construction is being undertaken
- refer only to the business(es) undertaking the construction and/or the site at which the construction is being undertaken
- are restricted to one such sign per property
- do not exceed 2.5m²
- are removed within 14 days of the completion of all construction works

Reason: To ensure compliance with Council's controls regarding signage.

34. Approved plans to be on site

A copy of all approved and certified plans, specifications and documents incorporating conditions of consent and certification (including the Construction Certificate if required for the work) shall be kept on site at all times during the demolition, excavation and construction phases and must be readily available to any officer of Council or the Principal Certifier.

Reason: To ensure that the development is in accordance with the determination.

35. Toilet facilities

Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus

one additional toilet for every 20 persons working at the site. Each toilet must:

1. be a standard flushing toilet connected to a public sewer, or
2. have an on-site effluent disposal system approved under the *Local Government Act 1993* <<https://www.legislation.nsw.gov.au/>>, or
3. be a temporary chemical closet approved under the *Local Government Act 1993* <<https://www.legislation.nsw.gov.au/>>.

Reason: Statutory requirement.

36. Garbage receptacle

A garbage receptacle must be provided at the work site before works begin and must be maintained until all works are completed. The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers. The receptacle lid must be kept closed at all times, other than when garbage is being deposited.

Reason: To ensure appropriate construction site waste management and to avoid injury to wildlife.

37. Services

Where required, the adjustment or inclusion of any new utility service facilities must be carried out in accordance with the requirements of the relevant utility authority. These works shall be at no cost to Council. It is the applicant's responsibility to make contact with the relevant utility authorities to ascertain the impacts of the proposal upon utility services (including water, phone, gas and the like). Council accepts no responsibility for any matter arising from its approval to this application involving any influence upon utility services provided by another authority.

Reason: Provision of utility services.

38. Erosion control

Temporary sediment and erosion control and measures are to be installed prior to the commencement of any works on the site. These measures must be maintained in working order during construction works up to completion. All sediment traps must be cleared on a regular basis and after each major storm and/or as directed by the Principal Certifier and Council officers.

Reason: To protect the environment from erosion and sedimentation.

39. Arborist's inspection and reporting

The tree/s to be retained shall be inspected and monitored by an AQF Level 5 arborist in accordance with the current version of AS4970 - Protection of trees on development sites during and after completion of development works to ensure their long term survival.

The Principal Certifier must be provided with reports by the project arborist within 7 days of the inspection detailing date, trees no, location and species, tree health, compliance with conditions of the Development Consent, description of the works inspected, description of any impacts to trees and any rectification or and

mitigation works prescribed and or undertaken.

Regular inspections and documentation from the arborist to the Principal Certifier are required but not limited to the following times or phases of work:

Tree/location	Time of inspection
Tree 20	Excavation for driveway within 4m radius of the trunk

All works as recommended by the project arborist are to be undertaken by an experienced arborist with a minimum AQF Level 3 qualification.

Reason: To ensure protection of existing trees.

40. Landscape works near trees

To avoid tree impacts, all landscape works such as soil preparation, soil spreading, mulching and planting shall be carried out by hand within the specified radius of the following trees.

Tree/location	Radius in metres
Trees 18 & 19	4m

Reason: To protect existing trees.

41. Cutting of tree roots and branches

Where it is unavoidable, tree roots and branches severed for the purposes of constructing the approved works shall be cut cleanly by hand, by an experienced arborist/horticulturist with a minimum AQF Level 3 qualification. All pruning works shall be undertaken as specified in Australian Standard 4373- Pruning of Amenity Trees. The arborist/horticulturalist shall provide a report to the Certifier confirming compliance with this condition.

Reason: To protect existing trees.

42. Retention of tree roots

No tree roots of 50mm or greater in diameter located within the specified radius of the trunk/s of the following tree/s shall be severed or injured in the process of any works during the construction period. All pruning of roots less than 50mm in diameter shall be undertaken by an experienced arborist/horticulturalist, with a minimum AQF Level 3 qualification.

Tree/location	Radius in metres
Trees 2A & 2B, 3, 4, 6, 7, 8, 9, 11, 12, 13, 16, 17A 17B	3.5m

Reason: To protect existing trees.

43. Approved tree works

Prior to the commencement of any works, the following is to be undertaken to the specified trees:

Tree/location	Approved tree works
Tree 2 Tibouchina sp	Removal

1. All trees are to be clearly tagged and identified in accordance with the specifications in the arborist report prior to the removal or pruning of any tree/s .
2. Canopy and/or root pruning shall be undertaken by an experienced arborist/horticulturist, with a minimum AQF Level 3 qualification.
3. All root or canopy pruning works shall be undertaken as specified in the current version of AS 4373 - Pruning of Amenity Trees.

Removal or pruning of any other tree on the site is not approved, excluding species and works exempt under *Ku-ring-gai Development Control Plan*.

Reason: To ensure that the development is in accordance with the Development Consent.

44. No storage of materials beneath trees

No activities, soil compaction, storage or disposal of materials shall take place beneath the canopy of any tree protected under *Ku-ring-gai Development Control Plan* at any time unless specified in other conditions of this consent.

Reason: To protect existing trees.

45. Removal of refuse

All builders' refuse, spoil and/or material unsuitable for use in landscape areas shall be removed from the site on completion of the building works.

Reason: To protect the environment.

46. On site retention of waste dockets

All demolition, excavation and construction waste dockets are to be retained on site, or at suitable location, in order to confirm which facility received materials generated from the site for recycling or disposal.

- each docket is to be an official receipt from a facility authorised to accept the material type, for disposal or processing
- this information is to be made available at the request of an authorised Council officer.

Reason: To protect the environment.

47. Maintenance of site

All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.

Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.

Any run-off and erosion control measures required must be maintained within their operating capacity until the completion of the works to prevent debris escaping from the site into drainage systems, waterways, adjoining properties and roads.

During construction:

- all vehicles entering or leaving the site must have their loads covered, and
- all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads.

At the completion of the works, the work site must be left clear of waste and debris.

Reason: To ensure the site is appropriately maintained.

48. Compliance with submitted geotechnical report

A contractor with specialist excavation experience must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation.

Geotechnical aspects of the development work, namely:

- appropriate excavation method and vibration control
- support and retention of excavated faces
- hydro-geological considerations

must be undertaken in accordance with the recommendations of the geotechnical report prepared by JK Geotechnics dated 2 September 2020 Ref: 333972rpt.

Prior approval must be obtained from all affected property owners, including Council, where rock anchors (both temporary and permanent) are proposed below adjoining properties.

Reason: To ensure the safety and protection of property.

49. Control of construction noise (Australian Standard)

During excavation, demolition and construction phases, noise generated from the site shall be controlled in accordance with best practice objectives of AS 2436-2010 and NSW Environment Protection Authority Interim Construction Noise Guidelines.

Reason: To protect the amenity of neighbouring properties

50. Vibration

Vibration emitted from activities associated with the demolition, excavation, construction and fitout of buildings and associated infrastructure shall satisfy the values referenced in Table 2.2 of the Environment Protection Authority Assessing Vibration - a Technical Guideline.

Reason: To protect residential amenity during construction.

51. Dust control

During excavation, demolition and construction, adequate measures shall be taken to prevent dust from affecting the amenity of the neighbourhood. The following measures must be adopted:

- physical barriers shall be placed around or over dust sources to prevent wind or activity from generating dust
- earthworks and scheduling activities shall be managed to coincide with the next stage of development to minimise the amount of time the site is left cut or exposed
- all materials shall be stored or stockpiled at the best locations
- the ground surface should be dampened slightly to prevent dust from becoming airborne but should not be wet to the extent that run-off occurs
- all vehicles carrying spoil or rubble to or from the site shall at all times be covered to prevent the escape of dust
- all equipment wheels shall be washed before exiting the site using manual or automated sprayers and drive-through washing bays
- gates shall be closed between vehicle movements and shall be fitted with shade cloth
- cleaning of footpaths and roadways shall be carried out at least daily
- no advertising or signage is permitted to be attached to dust cloth material.

Reason: To protect the environment and the amenity of surrounding properties.

52. Post-construction dilapidation report

A suitably qualified person shall prepare a post construction dilapidation report at the completion of the construction works. This report is to ascertain whether the construction works created any structural damage to adjoining buildings, infrastructure and roads. The report is to be submitted to the Principal Certifier. In ascertaining whether adverse structural damage has occurred to adjoining buildings, infrastructure and roads, the Principal Certifier must:

- compare the post-construction dilapidation report with the pre-construction dilapidation report
- have written confirmation from the relevant authority that there is no adverse structural damage to their infrastructure and roads

A copy of this report is to be forwarded to Council at the completion of construction works.

Reason: Management of records.

53. External walls and cladding flammability

The external walls of the building including attachments must comply with the relevant requirements of the *National Construction Code (NCC)*. Prior to the issue of a Construction Certificate and Occupation Certificate the Certifying Authority and Principal Certifying Authority must:

- (a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems proposed for use or used in the construction of external walls including finishes and claddings such as synthetic or aluminium composite panels comply with the relevant requirements of the NCC; and
- (b) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.

Reason: Statutory requirement to ensure the safety of occupants.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE:

54. Compliance with BASIX Certificate

Prior to the issue of an Occupation Certificate, the Principal Certifier shall be satisfied that all commitments listed in approved BASIX Certificate (referred to under Condition No 2) have been complied with.

Reason: Statutory requirement.

55. Certification of drainage works

Prior to issue of an Occupation Certificate, the Principal Certifier is to be satisfied that:

1. The stormwater drainage works have been satisfactorily completed in accordance with the approved Construction Certificate drainage plans.
2. The minimum retention and on-site detention volume storage requirements of BASIX and Part 24 Water Management in *Ku-ring-gai Development Control Plan*, respectively, have been achieved in full
3. Retained water is connected and available for use.
4. The drainage system has been installed by a licensed contractor in accordance with the Plumbing and Drainage Code AS3500.3 (2018) and the Building Code of Australia.
5. All enclosed floor areas, including habitable and garage floor levels, are safeguarded from outside stormwater runoff ingress by suitable differences in finished levels, gradings and provision of stormwater collection devices.

Evidence from a qualified and experienced consulting civil/hydraulic engineer documenting compliance with the above is to be provided to Council prior to the issue of an Occupation Certificate.

Reason: To ensure appropriate stormwater management.

56. Works as executed plans for stormwater management and disposal

Prior to issue of an Occupation Certificate, a registered surveyor must provide a works as executed survey of the completed stormwater drainage and management systems. The survey must be submitted to and approved by the Principal Certifier prior to issue of an Occupation Certificate. The survey must

indicate:

- as built (reduced) surface and invert levels for all drainage pits
- gradients of drainage lines, materials and dimensions
- as built (reduced) level(s) at the approved point of discharge to the public drainage system
- as built location and internal dimensions of all detention and retention structures on the property (in plan view) and horizontal distances to nearest adjacent boundaries and structures on site
- the achieved storage volumes of the installed retention and detention storages and derivative calculations
- as built locations of all access pits and grates in the detention and retention system(s), including dimensions
- the size of the orifice or control fitted to any on-site detention system
- dimensions of the discharge control pit and access grates
- the maximum depth of storage possible over the outlet control
- top water levels of storage areas and indicative RL's through the overland flow path in the event of blockage of the on-site detention system

The works as executed plan(s) must show the as built details above in comparison to those shown on the drainage plans approved with the Construction Certificate prior to commencement of works. All relevant levels and details indicated must be marked in red on a copy of the Certifier stamped construction certificate stormwater plans.

Reason: To ensure appropriate stormwater management.

57. Retention and re-use positive covenant

Prior to issue of an Occupation Certificate, the a positive covenant and restriction on the use of land under Section 88E of the *Conveyancing Act 1919*, burdening the property with the requirement to maintain the site stormwater retention and re-use facilities on the property shall be created.

The terms of the instruments are to be generally in accordance with the Council's "draft terms of Section 88B instruments for protection of retention and re-use facilities" and to the satisfaction of Council (refer to the Water Management Part 24R.8.2 of *Ku-ring-gai Development Control Plan*). For existing titles, the positive covenant and the restriction on the use of land is to be created through an application to the NSW Land Registry Services in the form of a request using forms 13PC and 13RPA. The relative location of the reuse and retention facility, in relation to the building footprint, must be shown on a scale sketch, attached as an annexure to the request forms.

Registered title documents showing the covenants and restrictions must be submitted to and approved by the Principal Certifier prior to issue of an Occupation Certificate.

Reason: To ensure appropriate storm-water management.

58. OSD positive covenant/restriction

Prior to issue of an Occupation Certificate, a positive covenant and restriction on the use of land under Section 88E of the *Conveyancing Act 1919*, burdening the

owner with the requirement to maintain the on-site stormwater detention facilities on the lot shall be created.

The terms of the instruments are to be generally in accordance with the Council's "draft terms of Section 88B instrument for protection of on-site detention facilities" and to the satisfaction of Council (refer to the Water Management Part 24R.8.1 of *Ku-ring-gai Development Control Plan*). For existing titles, the positive covenant and the restriction on the use of land is to be created through an application to the NSW Land Registry Services in the form of a request using forms 13PC and 13RPA. The relative location of the on-site detention facility, in relation to the building footprint, must be shown on a scale sketch, attached as an annexure to the request forms.

Registered title documents, showing the covenants and restrictions, must be submitted and approved by the Principal Certifier prior to issue of an Occupation Certificate.

Reason: To ensure appropriate stormwater management.

59. On-site detention system marker plate

A marker plate is to be permanently attached and displayed within the immediate vicinity of the On-Site Detention System prior to the issue of the Occupation Certificate.

This marker plate can be purchased from Council.

Reason: To prevent unlawful alteration.

60. Garbage and recycling facilities - residential premises

Prior to the issue of an Occupation Certificate, the Principal Certifier shall ensure that the waste management for the site is consistent with the objectives in Part 4C.9 (Waste Management) in the DCP

Reason: To protect residential amenity and to prevent environmental pollution.

61. Swimming pool (part 1)

Prior to the issue of an Occupation Certificate, the Principal Certifier shall be satisfied that:

1. Access to the swimming pool/spa is to be restricted by a child resistant barrier in accordance with the regulations prescribed in the *Swimming Pools Act 1992*.
2. All mechanical equipment, including filters, pumps and heaters associated with the swimming and/or spa are housed within an enclosure. The enclosure is to be sound-proofed to the extent that noise from the operation of the mechanical equipment does not exceed 5dB(A) above the background noise (LA90, 15 min) level during the day when measured at the boundary of the nearest potentially affected residential occupancies properties, and is not audible in habitable rooms of any adjoining residences at night (from 8.00pm to 7.00am). The background (LA90, 15 min) level is to be determined without the noise source present.

3. The swimming pool/spa shall be registered on the NSW Swimming Pool Register (www.swimmingpoolregister.nsw.gov.au <<http://www.swimmingpoolregister.nsw.gov.au>>) in accordance with the *Swimming Pools Act 1992*.

Reason: Statutory requirement to ensure the safety of children and to protect the amenity of surrounding properties.

62. Reinstatement of redundant crossings and completion of infrastructure works

Prior to issue of an Occupation Certificate, and upon completion of any works which may cause damage to Council's property, the Principal Certifier must receive a signed inspection form from Council which states that the following works in the road reserve have been completed:

1. new concrete driveway crossing in accordance with levels and specifications issued by Council
2. removal of all redundant driveway crossings and kerb laybacks (or sections thereof) and reinstatement of these areas to footpath, turfed verge and upright kerb and gutter (reinstatement works to match surrounding adjacent infrastructure with respect to integration of levels and materials)
3. full repair and resealing of any road surface damaged during construction
4. full replacement of damaged sections of grass verge to match existing
5. reconstruction of kerb and gutter with associated road pavement restoration for the full frontage of the development site

This inspection may not be carried out by the Principal Certifier because restoration of Council property outside the boundary of the site is not a matter listed in Clause 161 of the Environmental Planning and Assessment Regulation 2000.

All works must be completed in accordance with the General Specification for the Construction of Road and Drainage Works in Ku-ring-gai Council, dated November 2004. The Occupation Certificate must not be issued until all damaged public infrastructure caused as a result of construction works on the subject site (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) is fully repaired to the satisfaction of Council. Repair works shall be at no cost to Council.

Reason: To protect the public infrastructure.

63. Correct installation of gates

All gates must be installed so they do not open onto Council's footpath.

Reason: To ensure adequate access and egress and pedestrian safety.

64. Completion of landscape works

Prior to the issue of an Occupation Certificate, the Principal Certifier is to be satisfied that all landscape works have been undertaken in accordance with the approved plan(s) and conditions of this development consent.

Reason: To ensure that the landscape works are consistent with the Development Consent.

CONDITIONS TO BE SATISFIED AT ALL TIMES:

65. Outdoor lighting

All external lighting must:

1. Comply with AS/NZS 4282:2019: *Control of the obtrusive effects of outdoor lighting* and
2. Be mounted, screened and directed in a way that it does not create a nuisance or light spill on to buildings on adjoining lots or public places.

Lighting at vehicle access points to the development must be provided in accordance with AS/NZS 1158 Set: 2010 *Lighting for roads and public spaces*.

Reason: To protect the amenity of surrounding properties.

66. Noise Control

Noise levels associated with air conditioning units, plant, equipment and the like shall not exceed more than 5dB(A) above the background noise (LA90, 15 min) level during the day and evening, when measured at the boundary of the nearest potentially affected residential occupancies and shall not operate at a noise level that is audible in habitable rooms of any adjoining residences at night (between 10pm and 7am). The background (LA90, 15 min) level is to be determined without the source noise present.

Reason: To protect the amenity of surrounding residents.

67. Swimming pool (part 2)

1. Access to the swimming pool must be restricted by a child resistant barrier in accordance with the *Swimming Pools Act 1992*.
2. Noise levels from the operation of mechanical equipment, including filters, pumps and heaters associated with the swimming pool, shall not exceed 5dB(A) above the background noise (LA90, 15 min) level during the day when measured at the boundary of the nearest affected residential occupancies and not be audible in habitable rooms of any adjoining residences at night (8.00pm and 7.00am). The background (LA90, 15 min) level is to be determined without the source noise present.
3. Devices or structures used for heating swimming pool water must not be placed where they are visible from a public place.
4. The disposal of backwash and/or the emptying of a swimming pool into a reserve, watercourse, easement or storm water drainage system is prohibited. These waters are to discharge via a permanent drainage line into Sydney Water's sewer in accordance with Australian Standard AS3500.2 section 10.9. Permission is to be obtained from Sydney Water prior to the emptying of any pool to the sewer.
5. Lighting from the swimming pool and other communal facilities shall not detrimentally impact the amenity of other premises and adjacent dwellings.

Reason: To ensure the safety of children and protect the environment and amenity of surrounding properties.