



## Land and Environment Court New South Wales

<b>Medium Neutral Citation:</b>	<b>Aidop No.3 Pty Ltd ATF Aidop No.3 Unit Trust v North Sydney Council [2022] NSWLEC 1662</b>
<b>Hearing dates:</b>	13 and 18 October, 2, 11 and 24 November 2022
<b>Date of orders:</b>	30 November 2022
<b>Decision date:</b>	30 November 2022
<b>Jurisdiction:</b>	Class 1
<b>Before:</b>	Chilcott C
<b>Decision:</b>	The Court orders that: <ul style="list-style-type: none"> <li>(1) The Applicant is to pay the Respondent's costs thrown away by the amendment of the development application pursuant to s 8.15(3) of the <i>Environmental Planning and Assessment Act 1979</i>, as agreed or assessed.</li> <li>(2) The Applicant's amended written request under clause 4.6 of the North Sydney Local Environmental Plan 2013 (NSLEP) dated 1 November 2022, seeking a variation of the development standard for height under clause 4.3 of the NSLEP, is upheld.</li> <li>(3) The appeal is upheld.</li> <li>(4) Development application DA86/22, as amended, for the consolidation of 2 lots, demolition of existing structures, excavation and construction of a six-storey residential flat building containing 21 apartments over 2 levels of basement parking and parking at grade, landscaping and associated works at 96-98 Ben Boyd Rd, Neutral Bay, is determined by the grant of consent, subject to the conditions of consent in Annexure "A".</li> </ul>
<b>Catchwords:</b>	DEVELOPMENT APPLICATION – conciliation conference – agreement between the parties – orders.
<b>Legislation Cited:</b>	Environmental Planning and Assessment Act 1979, ss 4.15, 4.16, 8.7, 8.15(3) Environment Planning and Assessment Regulation 2000 cl

55, Sch 1

Land and Environment Court Act 1979, s 34

North Sydney Local Environmental Plan 2013, cll 2.3, 2.7,  
4.3, 4.4, 4.6, 5.10, 5.21,6.2, 6.10

State Environmental Planning Policy (Biodiversity and  
Conservation) 2021 Chps 2, 10

State Environmental Planning Policy (Building  
Sustainability Index: BASIX) 2004

State Environmental Planning Policy No 65—Design  
Quality of Residential Apartment Development, cll 28, 30

State Environmental Planning Policy (Resilience and  
Hazards) 2021, cl 4.6

State Environmental Planning Policy (Transport and  
infrastructure) 2021, Div 17

**Texts Cited:**

North Sydney Council, Community Engagement Protocol  
(2019)

North Sydney Development Control Plan 2013

Land and Environment Court of NSW, COVID-19 NSW  
Department of Planning and Environment, Apartment  
Design Guide, 2015

Pandemic Arrangements Policy (April 2021)

**Category:**

Principal judgment

**Parties:**

AIDOP No 3 Pty Ltd ATF Aidop No 3 Unit Trust (Applicant)  
North Sydney Council (Respondent)

**Representation:**

Counsel:

M Sonter (Applicant)

K Law (Solicitor)(Respondent)

Solicitors:

Mills Oakley (Applicant)

Matthews Folbigg Pty Ltd (Respondent)

**File Number(s):**

2022/165233

**Publication restriction:**

No

**JUDGMENT**

1 **COMMISSIONER:** AIDOP No 3 Pty Ltd ATF Aidop No 3 Unit Trust (the Applicant) has appealed the refusal by North Sydney Council (the Respondent) of its Development Application DA 86/22, made with owner's consent, seeking consent for the consolidation of two lots, demolition of existing structures, excavation and construction

of a six-storey residential flat building over two levels of basement parking and parking at grade, landscaping and associated works (the Proposed Development) at 96-98 Ben Boyd Rd, Neutral Bay (the Subject Site).

- 2 The appeal is made under s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and falls within Class 1 of the Court's jurisdiction. The appeal is determined pursuant to the provisions of s 4.16 of the EP&A Act.
- 3 The Proposed Development was notified in accordance with the provisions of North Sydney Council's Community Engagement Protocol 2019 between 8 April 2022 and 22 April 2022. Twenty-one (21) submissions were received in response to the initial notification. Between 10 and 23 November 2022 the Amended Application was re-notified.
- 4 On 13 and 18 October, 2, 11 and 24 November 2022, the Parties participated in a s 34 conciliation conference under the *Land and Environment Court Act 1979* (LEC Act) and reached an in-principle agreement regarding the granting of consent to the Applicant's development application, subject to conditions.
- 5 The conciliation conference was convened in a manner consistent with the Land and Environment Court's COVID-19 Pandemic Arrangements Policy.
- 6 A site inspection was undertaken prior to the conciliation conference being convened, and further objector submissions were during the site view stating concerns in relation to potential impacts concerning view loss, traffic and the bulk, scale and character of the Proposed Development.
- 7 At the conciliation conference following the site view, the Parties reached an 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 consent to the Applicants' development application, subject to conditions.
- 8 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.
- 9 There are jurisdictional matters that must be satisfied before the Court can exercise its power to grant consent to the Proposed Development, and those requirements have been satisfied as follows:
  - (1) in relation to the provisions of North Sydney Local Environmental Plan 2013 (NSLEP):
    - (a) the Subject Site is zoned as R4 High Density Residential pursuant to the provisions of cl 2.3 of NSLEP, and:
      - (i) the proposed use 'residential flat building' is permissible within the R4 zone;
      - (ii) the Proposed Development is consistent with the objectives for development within the zone in which the development is proposed to be carried out;
    - (b) the Development Application seeks consent for the demolition of existing structures on Subject Site and under cl 2.7 of the NSLEP, this requires consent. The Applicant has provided a waste management plan outlining

the process of demolition and management of refuse materials;

- (c) pursuant to cl 4.3 of NSLEP in relation to the height of buildings (HoB) a development standard of 12m is applicable to development on the Subject Site; and
- (i) the Amended Application has reduced the overall height of the Proposed Development by 750mm from the original proposal, resulting in a maximum height of 13.65m, which is 1.65m above the HoB standard applicable to the Subject Site;
  - (ii) the Applicant has prepared a written request pursuant to the provisions of cl 4.6 of NSLEP, prepared by Mr Stephen Kerr of Glyde Consulting and dated 1/11/22, seeking to vary the applicable HoB standard;
  - (iii) 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 standard is acceptable for the reasons set out the request, which I adopt:
- (d) the Applicant's written request to vary the HoB development standard pursuant to cl 4.6 of NSLEP, noted that compliance with the development standard was unreasonable or unnecessary given that the objectives of the standard are achieved notwithstanding the non-compliance, for reasons including:
- (i) the proposed variation is limited to part of the upper level, roof slab and lift overrun of the Proposed Development, with the majority of the building being located below the maximum building height;
  - (ii) the massing of the building has been arranged in direct response to the sloping topography, existing built form on site and surrounding character, such that the exceedance to the HoB development standard has been placed in locations to minimise potential adverse impacts on neighbouring properties;
  - (iii) the proposed built form has been designed to create an improved interface with the surrounding streets and neighbouring developments, considering the constraints that arise due to the Subject Site's significant sloping topography;
  - (iv) the HoB non-compliances are located at the south-west corner of the proposed built form and do not cause view loss of scenic, highly valued items or icons from neighbouring properties and this was confirmed within a revised View Impact Assessment, accompanied by updated photomontages and 3D views, prepared by Virtual Ideas, and which concluded that the amended form of the Proposed Development provides for reasonable and acceptable view sharing outcomes;
  - (v) the portions of the Proposed Development that would contravene the HoB standard do not cause any unacceptable solar access or view impacts to adjoining dwellings, public reserves or streets;
  - (vi) the proposal facilitates the orderly and economic development of the Subject Site, and in particular the lot at 96 Ben Boyd Road, which is presently occupied by an isolated single dwelling house that is inconsistent with the objectives of the R4 Zone;
  - (vii) the redevelopment of the Subject Site will provide for the housing needs of the community within a high density residential environment in accordance with the objectives of the R4 zoning of the Subject Site;
  - (viii) the Proposed Development is compatible with the land uses in the locality.

(e)

the Applicant's written request to vary the HoB development standard pursuant to cl 4.6 of NSLEP, also noted that approval of the Proposed Development is in the public interest because the Proposed Development is consistent with the objectives of the development standard and there are sufficient environmental planning grounds to justify contravening the development standard, noting:

- (i) the natural topography of the site is a steep slope, with a slope from north to south, which creates physical constraints on the form of the development proposed on Subject Site, and the Applicant's proposed built form is responsive to these constraints;
  - (ii) the variation to the height does not result in any unreasonable impacts to residential amenity, solar access, views or privacy;
- (f) under the provisions of cl 4.4 of NSLEP the applicable Floor Space Ratio Map provides no maximum floor space ratio (FSR) for development on the Subject Site.
- (g) the provisions of cl 5.10 concern heritage conservation, and in relation to this:
- (i) the Subject Site is located within close proximity to one local heritage item 'House' at 107 Ben Boyd Road, Neutral Bay;
  - (ii) the Applicant has provided a Heritage Impact Statement with its Amended Application in relation to which, the Parties agree, and I am satisfied, that the Proposed Development will not prejudice the heritage significance of the nearby item;
  - (iii) the Subject Site includes an existing stone wall which is not a listed heritage item, but which does currently act as a visually distinctive stop at the point where the road splits and continues up Ben Boyd Road, and the Proposed Development includes retention of the existing stone wall, where possible, and includes a methodology for reconstructing the stonewall;
- (h) the provisions of cl 5.21 concern flood planning, and in relation to this the Subject Site is not located within a flood planning area and so this clause has no work to do in relation to the Proposed Development. However, the Applicant has included a Stormwater Management Report prepared by BG&E which confirms and assesses the current and future drainage design arrangements for the Subject Site and Proposed Development;
- (i) the provisions of cl 6.10 concern earthworks, and the Proposed Development includes earthworks for the provision of two basement parking levels and parts of the dwellings, and in relation to this:
- (i) the Applicant has provided a Geotechnical Report as well as an updated Geotechnical Report both prepared by EI Australia and which provide additional detail regarding applicable rock classifications;
  - (ii) the Proposed Development, as amended, has significantly reduced the proposed extent of bulk excavation by 258m<sup>2</sup> within the basement level 1 and 270m<sup>2</sup> within basement level 2;
  - (iii) the Applicant has also prepared a Structural Excavation Methodology for the Proposed Development prepared by BG&E; and
  - (iv) the Parties advise, and I am satisfied, that the Applicant's proposed excavation methodology is acceptable, and the recommendations provided within the Applicant's Geotechnical Report have been adopted within the Parties' agreed conditions of consent which would be imposed with the grant of consent for the Proposed Development;
- (2) in relation to the provisions of Schedule 1 of the *Environmental Planning and Assessment Regulation 2000* and *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, the Applicant's amended development

application is accompanied by an updated BASIX Certificate (Certificate No. 1273153M\_03 dated 21 November 2022) which is consistent with the Amended Application;

- (3) in relation the provisions of *State Environmental Planning Policy (Resilience and Hazards) 2021* (SEPP R&H), the Parties advise, and I am satisfied, that:
- (a) the Applicant has provided a Preliminary Site Investigation prepared by EI Australia which found that:
    - (i) the Subject Site had been used for residential purposes since at least 1955;
    - (ii) there was no evidence of major excavation or filling activity or of manufacturing or other potentially contaminating activity at the site or in the general area; and
    - (iii) the Parties agree that the potential for contamination to exist on the Subject Site is low; and
    - (iv) I am satisfied, relying on the Application's site investigations, that the Subject Site is, or will be made, suitable for its proposed use for residential purposes in satisfaction of the provisions of cl 4.6 of SEPP R&H;
  - (4) in relation to the provisions of *State Environmental Planning Policy (Transport and Infrastructure) 2021* (SEPP T&I) the provisions of Division 17 of SEPP T&I concerning roads and traffic apply to the Proposed Development, and in relation to these:
    - (a) the Subject Site does not have a frontage to, nor is it located within proximity to, a classified road;
    - (b) the potential impact of the Proposed Development regarding traffic generation, design of the car lifts and basement car park accessibility, along with requisite swept paths and sight lines, have been assessed by the Applicant's traffic engineer and which have been reported in the following documents:
      - (i) Transport Assessment prepared by JMT Consulting dated 14 March;
      - (ii) an updated Traffic Assessment prepared by JMT Consulting dated 28 October 2022;
    - (c) these assessments conclude that the Proposed Development provides:
      - (i) an acceptable level of traffic generation for a high-density residential use relative to the Subject Site's location and surrounding road network and public transport availability;
      - (ii) a compliant number of car, bike and motorcycle parking spaces as required under the provisions of North Sydney Development Control Plan 2013 (NSDCP);
      - (iii) adequate driver sight lines for entry and exit;
      - (iv) suitable vehicle site access arrangements;
      - (v) an acceptable car lift system appropriate for the scale of the Proposed Development, as amended; and
      - (vi) acceptable and compliant vehicle swept paths;
    - (d) the Parties agree, and I am satisfied, that the Proposed Development, as amended, is compliant with the relevant criteria and matters for consideration under the provisions of SEPP T&I;
  - (5) the provisions of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development 2002* (SEPP 65) apply to the Proposed Development, as amended, and in relation to those:
    - (a)

the provisions of cl 28(2) of SEPP 65 requires a consent authority, or the Court on appeal, to take into consideration the following prior to determining a development application:

- (i) the advice (if any) obtained from the design review panel; and
  - (ii) the design quality of the development when evaluated in accordance with the design quality principles; and
  - (iii) the provisions of the Apartment Design Guide;
- (b) the provisions of cl 30(2)(a) require that a consent authority, or the Court on appeal, must not grant consent unless it is not satisfied that the development demonstrates adequate regard to the design quality principles; and
- (c) the Applicant has provided a Design Statement and a Verification Statement, along with an updated Verification Statement prepared by the Applicant's architect, which confirm that the design quality of the development in relation to design quality principles, and the Apartment Design Guide, have been considered; and
- (d) in relation to the potential acoustic impacts of the Proposed Development, the Parties agree, and I am satisfied, that the development has been designed to comply with the recommendations provided by the Applicant's acoustic engineer as provided in the following reports:
- (i) an Acoustic Report prepared by E-Lab Consulting included in the Development Application assessed the Proposed Development in compliance with internal acoustic amenity; and
  - (ii) an Updated Acoustic Report prepared by E-Lab Consulting in relation to the Proposed Development, as amended, which assessed the potential acoustic impacts of the car-lift on neighbouring developments; and
- (e) the Parties agree, and I am satisfied, that the Proposed Development, as amended:
- (i) has fulfilled the requirements of both cl 28 and 30 of SEPP 65; and
  - (ii) satisfies the requisite design quality principles applicable in accordance with these clauses;
- (6) in relation to the provisions of *State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP B&C)*:
- (a) Chapter 10 of SEPP B&C includes:
    - (i) aims of which are to protect the catchment, foreshores, waterways and island of Sydney Harbour, including views to and from Sydney Harbour; and
    - (ii) provisions relating to the Subject Site which is located within the Sydney Harbour Catchment, and
  - (b) the potential impacts of the Proposed Development on the Sydney Harbour catchment have been assessed in relation to:
    - (i) the amended architectural plans prepared by MHNDU;
    - (ii) the View Sharing Assessment prepared by Urbis dated March 2022;
    - (iii) an Updated View Sharing Addendum prepared by Urbis dated 31 October 2022; and
    - (iv) View Impact Photomontages prepared by Virtual Ideas dated October 2022;
  - (c) The Parties agree, and I am satisfied, that on the basis of these documents, the Proposed Development provides for reasonable and acceptable view sharing outcomes for dwellings immediately

neighbouring the Subject Site;

- (d) Chapter 2 of SEPP B&C relates to clearing vegetation in non-rural areas, and in relation to this:
- (i) the Proposed Development seeks consent to remove 7 trees on the Subject Site;
  - (ii) the removal of these trees has been assessed within the Applicant's Arboricultural Development Impact Assessment Report prepared by Birds Tree Consultancy and dated 8 March 2022 which concluded that the removal of these trees is consistent with the provisions of "Part 16 – Tree and Vegetation Management" in NSDCP having regard to the tree species, integrity, level of significance and replacement planting as proposed in the landscaping strategy for the site; and
  - (iii) the Parties agree, and I am satisfied, that the Proposed Development is consistent with the provisions of Chapter 2 of SEPP B&C;
- (7) there are no other provisions of NSDCP that would form a basis for refusal of the Proposed Development;
- (8) the Proposed Development is acceptable having regard to the provisions of s 4.15(1) of the EP&A Act, including in relation to the submissions of the objectors which is a relevant consideration under section 4.15(1)(d) of the EP&A Act.

10 Having considered the advice of the Parties, provided above at [9], I agree that:

- (1) the Applicant's Development Application can be approved having regard to the matters in s 4.15(1)(b) – (e) of the EP&A Act; and
- (2) the jurisdictional prerequisites on which I must be satisfied before I can exercise the power under s 4.16 of the EP&A Act have been so satisfied;
- (3) approval of the Proposed Development is in the public interest.

11 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.

12 As the Parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required to dispose of the proceedings in accordance with the Parties' decision.

13 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.

14 The Court notes that:

- (1) North Sydney Council, as the relevant consent authority, has agreed, under cl 55(1) of the Environmental Planning and Assessment Regulation 2000, to the Applicant amending development application DA86/22 to rely upon the following documents:

Plan Name	Drawing number	Revision	Date	Prepared by
<b>Architectural Plans</b>				
Cover Page	DA0000	C	01/11/2022	MHDNU



<b>Plan Name</b>	<b>Drawing number</b>	<b>Revision</b>	<b>Date</b>	<b>Prepared by</b>
Project Summary	DA0001	C	01/11/2022	MHDNU
Site Context	DA1000	C	01/11/2022	MHDNU
Site Analysis	DA1001	C	01/11/2022	MHDNU
Site Plan	DA1000	C	01/11/2022	MHDNU
Demolition Plan	DA1003	C	01/11/2022	MHDNU
Basement 02 Plan	DA2000	C	01/11/2022	MHDNU
Basement 01 Plan	DA2001	C	01/11/2022	MHDNU
Ground Floor Plan	DA2002	C	01/11/2022	MHDNU
Level 1 Floor Plan	DA2003	C	01/11/2022	MHDNU
Level 2 Floor Plan	DA2004	C	01/11/2022	MHDNU
Level 3 Floor Plan	DA2005	C	01/11/2022	MHDNU
Level 4 Floor Plan	DA2006	C	01/11/2022	MHDNU
Level 5 Floor Plan	DA2007	C	01/11/2022	MHDNU
Roof Plan	DA2008	C	01/11/2022	MHDNU
Elevation North	DA3000	C	01/11/2022	MHDNU
Elevation South	DA3001	C	01/11/2022	MHDNU
Elevation East	DA3002	C	01/11/2022	MHDNU
Elevation West	DA3003	C	01/11/2022	MHDNU
Section A	DA3100	C	01/11/2022	MHDNU

<b>Plan Name</b>	<b>Drawing number</b>	<b>Revision</b>	<b>Date</b>	<b>Prepared by</b>
Section B	DA3101	C	01/11/2022	MHDNU
External Finishes 01	DA6000	C	01/11/2022	MHDNU
External Finishes 02	DA6001	C	01/11/2022	MHDNU
SEPP 65 – Solar & Cross Ventilation	DA9100	C	01/11/2022	MHDNU
SEPP 65 - Storage	DA9101	C	01/11/2022	MHDNU
Landscape Calculation	DA9102	C	01/11/2022	MHDNU
Site Coverage Diagram	DA9103	C	01/11/2022	MHDNU
Height Plane Diagram	DA9104	C	01/11/2022	MHDNU
Waste Management Plan	DA9300	C	01/11/2022	MHDNU
Adaptable Unit – Level 3 & 4	DA9301	C	01/11/2022	MHDNU
<b>Landscape plans</b>				
Concepts Landscape Plan	Page 21	D	28/10/2022	Arcadia Landscape Architecture
Concepts Entry Forecourt Legend	Page 22	D	28/10/2022	Arcadia Landscape Architecture
Concepts Entry Forecourt Sections A B Key Plan	Page 23	D	28/10/2022	Arcadia Landscape Architecture
Concepts Entry Private Courtyards Sections D E Key Plan	Page 24	D	28/10/2022	Arcadia Landscape Architecture

<b>Plan Name</b>	<b>Drawing number</b>	<b>Revision</b>	<b>Date</b>	<b>Prepared by</b>
Concepts Private Courtyards Section F Key Plan	Page 25	D	28/10/2022	Arcadia Landscape Architecture
Concepts Sandstone Edge Conditions Key Plan	Page 26	D	28/10/2022	Arcadia Landscape Architecture
Concepts Rooftop Planting	Page 27	D	28/10/2022	Arcadia Landscape Architecture
Landscape Areas	Page 29	D	28/10/2022	Arcadia Landscape Architecture
Canopy Cover	Page 30	D	28/10/2022	Arcadia Landscape Architecture
Design Strategies Material Look and Feel	Page 31	D	28/10/2022	Arcadia Landscape Architecture
Design Strategies Indicative Lighting Strategy	Page 32	D	28/10/2022	Arcadia Landscape Architecture
Design Strategies Planting Look and Feel	Page 33	D	28/10/2022	Arcadia Landscape Architecture
Design Strategies Planting Palette	Page 34	D	28/10/2022	Arcadia Landscape Architecture
Design Strategies Planting Schedule	Page 35	D	28/10/2022	Arcadia Landscape Architecture

<b>Plan Name</b>	<b>Drawing number</b>	<b>Revision</b>	<b>Date</b>	<b>Prepared by</b>
Landscape Plan Ground	SK1	D	28/10/2022	Arcadia Landscape Architecture
Landscape Plan Rooftops	SK2	D	28/10/2022	Arcadia Landscape Architecture
Landscape Details	SK3	D	28/10/2022	Arcadia Landscape Architecture

### **Stormwater plans**

Cover Sheet, Locality Plan and Drawing Index	CI-0000	B	31/10/2022	BG&E
General Notes	CI-0001	B	31/10/2022	BG&E
Ground Floor Siteworks and Drainage Plan	CI-0200	C	31/10/2022	BG&E
Level 1 Siteworks and Drainage Plan	CI-0201	A	31/10/2022	BG&E
Driveway Sections	CI-0270	B	31/10/2022	BG&E
Drainage Catchment Plan	CI-0300	C	31/10/2022	BG&E
Drainage Details	CI-0340	B	31/10/2022	BG&E
OSD Plans, Sections and Details	CI-0350	B	31/10/2022	BG&E
Erosion and Sediment Control Plan	CI-0700	C	31/10/2022	BG&E
Erosion and Sediment Control Details	CI-0710	B	31/10/2022	BG&E

Plan Name	Drawing number	Revision	Date	Prepared by
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## Reports

Updated Clause 4.6 Request prepared by GYDE dated 1 November 2022

Updated BASIX Certificate No. 1273153M\_03 prepared by E-LAB Consulting dated 21 November 2022

Updated BASIX Compliance Report prepared by E-LAB Consulting dated 22 November 2022

Updated SEPP 65 Verification Statement prepared by MHNDH dated 31 October 2022

Updated Traffic Report prepared by JMT Consulting dated 28 October 2022

Updated Geotechnical Investigation prepared by EI Australia dated 21 September 2022

Aboriginal Due Diligence Report prepared by Curio Projects dated 22 September 2022

Structural Excavation Methodology prepared by BG&E dated 25 August 2022

- (2) the Amended Application was lodged on the NSW planning portal on 24 November 2022;
- (3) the Amended Application was filed with the Court on 24 November 2022.

## Orders

15 The Court orders that:

- (1) the Applicant is to pay the Respondent's costs thrown away by the amendment of the development application pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979*, as agreed or assessed;
- (2) the Applicant's amended written request under clause 4.6 of the North Sydney Environmental Plan 2013 dated 1 November 2022, seeking a variation of the development standard for height under clause 4.3 of the NSLEP, is upheld;
- (3) the appeal is upheld;
- (4) Development Application DA86/22, as amended, for the consolidation of two lots, demolition of existing structures, excavation and construction of a six-storey residential flat building containing 21 apartments over two levels of basement parking and parking at grade, landscaping and associated works at 96-98 Ben Boyd Rd, Neutral Bay, is determined by the grant of consent, subject to the conditions of consent in Annexure "A".

**M Chilcott**

**Commissioner of the Court**

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Annexure A

**DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.**

Decision last updated: 30 November 2022

**Annexure A**

**WITHOUT PREJUDICE DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF  
CONSENT**

**Development Application No:** DA86/22

**Development:** Demolition of existing structures and construction of a residential flat building containing 21 apartments including basement parking and associated landscaping and civil works

**Site:** 96-98 Ben Boyd Road, Neutral Bay

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

**Date of determination:** 30 November 2022.

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

**TERMINOLOGY**

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the "applicant" means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the "site", means the land known as 96-98 Ben Boyd Road, Neutral Bay.

The following conditions of consent are imposed for the following reasons:

- (a) To ensure compliance with the terms of the relevant Environmental Planning Instrument and/or Building Code of Australia and/or Council's codes, policies and specifications.
- (b) To protect the environment.
- (c) To ensure that there is no unacceptable impact on the amenity of the area, or to private and public property.
- (d) It is in the public interest.

**DEVELOPMENT DETAILS****A. Conditions that Identify Approved Plans****Development in Accordance with Plans/Documentation**

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan Name	Drawing number	Revision	Date	Prepared by
<b>Architectural Plans</b>				
Cover Page	DA0000	C	01/11/2022	MHDNU
Project Summary	DA0001	C	01/11/2022	MHDNU
Site Context	DA1000	C	01/11/2022	MHDNU
Site Analysis	DA1001	C	01/11/2022	MHDNU
Site Plan	DA1000	C	01/11/2022	MHDNU
Demolition Plan	DA1003	C	01/11/2022	MHDNU
Basement 02 Plan	DA2000	C	01/11/2022	MHDNU
Basement 01 Plan	DA2001	C	01/11/2022	MHDNU
Ground Floor Plan	DA2002	C	01/11/2022	MHDNU
Level 1 Floor Plan	DA2003	C	01/11/2022	MHDNU
Level 2 Floor Plan	DA2004	C	01/11/2022	MHDNU
Level 3 Floor Plan	DA2005	C	01/11/2022	MHDNU
Level 4 Floor Plan	DA2006	C	01/11/2022	MHDNU
Level 5 Floor Plan	DA2007	C	01/11/2022	MHDNU
Roof Plan	DA2008	C	01/11/2022	MHDNU
Elevation North	DA3000	C	01/11/2022	MHDNU
Elevation South	DA3001	C	01/11/2022	MHDNU
Elevation East	DA3002	C	01/11/2022	MHDNU
Elevation West	DA3003	C	01/11/2022	MHDNU
Section A	DA3100	C	01/11/2022	MHDNU



Section B	DA3101	C	01/11/2022	MHDNU
External Finishes 01	DA6000	C	01/11/2022	MHDNU
External Finishes 02	DA6001	C	01/11/2022	MHDNU
SEPP 65 – Solar & Cross Ventilation	DA9100	C	01/11/2022	MHDNU
SEPP 65 - Storage	DA9101	C	01/11/2022	MHDNU
Landscape Calculation	DA9102	C	01/11/2022	MHDNU
Site Coverage Diagram	DA9103	C	01/11/2022	MHDNU
Height Plane Diagram	DA9104	C	01/11/2022	MHDNU
Waste Management Plan	DA9300	C	01/11/2022	MHDNU
Adaptable Unit – Level 3 & 4	DA9301	C	01/11/2022	MHDNU
<b>Landscape plans</b>				
Concepts Landscape Plan	Page 21	D	28/10/2022	Arcadia Landscape Architecture
Concepts Entry Forecourt Legend	Page 22	D	28/10/2022	Arcadia Landscape Architecture
Concepts Entry Forecourt Sections A B Key Plan	Page 23	D	28/10/2022	Arcadia Landscape Architecture
Concepts Entry Private Courtyards Sections D E Key Plan	Page 24	D	28/10/2022	Arcadia Landscape Architecture
Concepts Private Courtyards Section F Key Plan	Page 25	D	28/10/2022	Arcadia Landscape Architecture
Concepts Sandstone Edge Conditions Key Plan	Page 26	D	28/10/2022	Arcadia Landscape Architecture
Concepts Rooftop Planting	Page 27	D	28/10/2022	Arcadia Landscape Architecture
Landscape Areas	Page 29	D	28/10/2022	Arcadia Landscape Architecture
Canopy Cover	Page 30	D	28/10/2022	Arcadia Landscape Architecture
Design Strategies Material Look and Feel	Page 31	D	28/10/2022	Arcadia Landscape Architecture
Design Strategies Indicative Lighting Strategy	Page 32	D	28/10/2022	Arcadia Landscape Architecture
Design Strategies Planting Look and Feel	Page 33	D	28/10/2022	Arcadia Landscape Architecture
Design Strategies Planting Palette	Page 34	D	28/10/2022	Arcadia Landscape Architecture

Design Strategies Planting Schedule	Page 35	D	28/10/2022	Arcadia Landscape Architecture
Landscape Plan Ground	SK1	D	28/10/2022	Arcadia Landscape Architecture
Landscape Plan Rooftops	SK2	D	28/10/2022	Arcadia Landscape Architecture
Landscape Details	SK3	D	28/10/2022	Arcadia Landscape Architecture
<b>Stormwater plans</b>				
Cover Sheet, Locality Plan and Drawing Index	CI-0000	B	31/10/2022	BG&E
General Notes	CI-0001	B	31/10/2022	BG&E
Ground Floor Siteworks and Drainage Plan	CI-0200	C	31/10/2022	BG&E
Level 1 Siteworks and Drainage Plan	CI-0201	A	31/10/2022	BG&E
Driveway Sections	CI-0270	B	31/10/2022	BG&E
Drainage Catchment Plan	CI-0300	C	31/10/2022	BG&E
Drainage Details	CI-0340	B	31/10/2022	BG&E
OSD Plans, Sections and Details	CI-0350	B	31/10/2022	BG&E
Erosion and Sediment Control Plan	CI-0700	C	31/10/2022	BG&E
Erosion and Sediment Control Details	CI-0710	B	31/10/2022	BG&E
<b>Reports</b>				
Updated BASIX Certificate No. 1273153M_03 prepared by E-LAB Consulting dated 21 November 2022				
Updated BASIX Compliance Report prepared by E-LAB Consulting dated 22 November 2022				
Updated SEPP 65 Verification Statement prepared by MHNDH dated 31 October 2022				
Structural Excavation Methodology prepared by BG&E dated 25 August 2022				

Note: The plan references may change subject to the satisfaction of the deferred commencement conditions.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

#### Plans on Site

- A2. A copy of all stamped approved plans, specifications and documents (including the plans, specifications and documents submitted and approved with the Construction Certificate) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the certifying authority upon their request.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information and to ensure ongoing compliance)

#### **No Demolition of Extra Fabric**

A3. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

#### **External Finishes and Materials**

A4. External finishes and materials must be in accordance with the submitted schedule DA 6000 A, DA6001 A, dated 18 March 2022 and prepared by MHNDUNION and received by Council unless otherwise modified by Council in writing.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

#### **Works to Stone Wall**

A5. All works to the stone wall at the Ben Boyd boundary of the site are to follow the methodology provided in the Stone Wall Reconstruction Methodology, John Outram Heritage Design, dated 21 November 2022. The works are to be guided by a suitably qualified heritage consultant and undertaken by a stonemason experienced in heritage work. Any variation to the works methodology will be notified in writing to the manager of development services and will require sign off by the manager of development services within Council.

(Reason: to ensure the appropriate conservation of the stone wall.)

#### **Staging of Construction Certificates**

A6. Prior to commencement of any construction works associated with the approved development, it is mandatory to obtain a Construction Certificate. Plans, specifications and relevant documentation accompanying the Construction Certificate must include any requirements imposed by the conditions of this Development Consent. It is acknowledged that staged Construction Certificates may be obtained in accordance with the following;

Stage 1 – Demolition, basement excavation, retention and shoring;

Stage 2 – Construction of basement slab including in-ground services;

Stage 3 – Construction of structure including services;

Stage 4 – Completion of works, landscaping and public art;

Conditions within this Development Approval should be read as being applicable to the *relevant* Construction Certificate and *relevant* requirements in relation to the particular construction certificate and are to be confirmed by the Principle Certifying Authority. Prior to the issue of any construction certificate a dilapidation report required by condition C2 is to be provided.

**B. Matters to be Completed before the lodgement of an Application for a Construction Certificate**

**Construction Management Program - Local Traffic Committee Approval**

**B1** A Construction Management Program prepared by a suitably qualified and experienced traffic consultant must be submitted and approved in writing by North Sydney Traffic Committee PRIOR TO THE ISSUE OF ANY Construction Certificate. Any use of Council property will require appropriate approvals prior to any work commencing. At a minimum, the Construction Management Program must specifically address the following matters:

- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
  - i. Dedicated temporary construction site driveway entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways and footways;
  - ii. The proposed signage for pedestrian management to comply with the relevant Australian Standards, including pram ramps;
  - iii. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
  - iv. The locations of any proposed Work Zones in the frontage roadways (to be approved by Council's Traffic Committee);
  - v. Locations of hoardings proposed;
  - vi. Location of any proposed crane standing areas;
  - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
  - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
  - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.
- b) A detailed heavy vehicle access route map through the Council area to Arterial Roads. Provision is to be made to ensure through traffic is maintained at all times.
- c) The proposed phases of works on the site, and the expected duration of each phase.
- d) How access to neighbouring properties will be maintained at all times and the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of process.
- e) The road is not to be used as a waiting area for trucks delivering to or awaiting pick up of materials.
- f) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising structural engineer and must not involve any permanent encroachment onto Councils property.
- g) Proposed protection for Council and adjoining properties. Details are to include site fencing and the provision of "B" class hoardings over footpaths and laneways.
- h) A Waste Management Plan. The Waste Management Plan must include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process.

All traffic control work and excavation, demolition and construction activities must be undertaken in accordance with the approved Construction Management Program and any conditions attached to the approved Program. A certificate of compliance with this condition must be obtained from Council's development engineers. The certificate and the approved Construction Management Program must be submitted as part of the documentation lodged with the application for approval of the relevant construction certificate. A copy of the approved Construction Management Program and any conditions imposed on that Program, must be kept on the site at all times and made available to any officer of

Council upon request.

Notes:

- 1) North Sydney Council's adopted fee for certification of compliance with this condition shall be payable on lodgement, or in any event, prior to the issue of the relevant approval.
- 2) Any use of Council property will require appropriate approvals and demonstration of liability insurances prior to such work commencing.
- 3) Failure to provide complete and detailed information may result in delays. It is recommended that your Construction Management Plan be lodged with Council as early as possible, as a minimum six (6) weeks' notice is required to refer items to the Traffic Committee.
- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed above.

(Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the demolition process in a manner that respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community)

**Landscape Plans**

**B2** The approved landscape plans are to be amended to demonstrate;

- a) Deletion of the proposed 1 x *Angophora costata* within the front setback and replacement with a grove of 3 x *Angophora costata*. Each tree shall have a minimum 2 metres distance between each tree trunk at planting and be located with a minimum clearance of 3 metres radius from any built structure, including retaining walls, pavements, and stormwater pits.
- b) The proposed medium sized trees are to be located with a minimum clearance of 2 metres radius of any built structure, including retaining walls, pavements, and stormwater pits.

(Reason: To ensure appropriate space is provided for long term tree health and stability and to reduce risk of future tree and structure conflicts that may result in tree removal)

**B3** A landscape maintenance strategy for the owner/occupier to administer over a 24 month Establishment period following the issue of the Occupation Certificate shall be prepared and provided to Council's or the Accredited Certifier's satisfaction with the relevant Construction Certificate Application.

- a) The strategy is to address maintenance issues such as plant survival, irrigation, soil testing, weeding, fertilising, pest and disease control, removal of plant stakes, replanting, formative and other pruning, and the like.

(Reason: To ensure the long term maturity, viability and amenity of the approved landscaping)

**C. Prior to the Issue of the relevant Construction Certificate (and ongoing, where indicated)**

**Dilapidation Report Damage to Public Infrastructure**

**C1.** A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the pre-developed condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any pre-developed damaged areas so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. A copy of the dilapidation survey and report is to be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The developer may be held liable for all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded and demonstrated as pre-existing under the requirements of this condition.

The developer shall bear the cost of carrying out works to restore all public infrastructure damaged as a result of the carrying out of the development, and no occupation of the development shall occur until damage caused as a result of the carrying out of the development is rectified.

A copy of the dilapidation survey and report must be lodged with North Sydney Council by the Certifying Authority with submission of the Construction Certificate documentation.

(Reason: To record the condition of public infrastructure prior to the commencement of construction)

#### **Dilapidation Report Private Property (Excavation)**

- C2. A full dilapidation survey and report on the visible and structural condition at 100 Ben Boyd Road must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The dilapidation report and survey are to be prepared by a consulting structural/geotechnical engineer agreed to by both the applicant and the owner of any affected adjoining property.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant **MUST DEMONSTRATE**, in writing, to the satisfaction of Council 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. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by the developer or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: To record the condition of property/i.e., prior to the commencement of construction)

#### **Shoring for Adjoining Property**

- C3. Where any shoring and/or rock stabilisation for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising structural engineer, showing all details, including the extent of encroachment and the method of removal and de-stressing of shoring elements, must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. A copy of this documentation must be provided to the Council for record purposes.

Note: Approval of engineering drawings for shoring works to be located on adjoining property by the Certifying Authority does not authorise a trespass on private or public land. All relevant permissions/legal rights must be obtained to undertake any works on adjoining land.

(Reason: To ensure the protection of existing public infrastructure and adjoining properties)

#### **Geotechnical Report**

- C4. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following:
- a) the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0 m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;

- b) the appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended;
- c) the proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (permanent support must be provided within the subject site unless legal agreement from affected landholder tabled authorising encroachment and submitted to the principle certifying authority);
- d) the existing groundwater levels in relation to the basement structure, where influenced;
- e) the drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a "dam" for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and
- f) recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/hydrogeological engineer with previous experience in such investigations and reporting. It is to include a plaxis analysis of the complete excavation in stages and adjacent loading of retained structure and/or road surcharge.

It is the responsibility of the consulting geotechnical/hydrological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate.

The design principles for the geotechnical report are as follows:

- a) no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure;
- b) no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- c) no changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- d) vibration is to be minimised or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development;
- e) appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and
- f) an adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage.

The report, satisfying the requirements of this condition, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The professional recommendations, implementation program, monitoring program, mitigation measures and the like contained in the report must be implemented in full during the relevant stages of excavation and construction.

(Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process)

### **Sediment Control**

C5. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

A Sediment Control Plan must be prepared and submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate and prior to any works commencing. The Sediment Control Plan must be consistent with the Blue Book and disclose:

- a) All details of drainage to protect and drain the site during the construction processes;
- b) All sediment control devices, barriers and the like;
- c) Sedimentation tanks, ponds or the like;
- d) Covering materials and methods; and
- e) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- f) Methods for the temporary and controlled disposal of stormwater during construction.

All works must be undertaken in accordance with the approved Sediment Control plan.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

### **Waste Management Plan**

C6. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:

- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
- b) The design of the on-site waste storage and recycling area; and
- c) Administrative arrangements for waste and recycling management during the construction process.

The approved Waste Management Plan must be complied with at all times in the carrying out of the development.

(Reason: To encourage the minimisation of waste and recycling of building waste)

### **Skylight(s)**

C7. Skylight flashing(s) and frame(s) to be coloured to match the roof material. Skylight(s) to sit no higher than 200 mm above roof plane when in a closed position. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate.



The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To minimise the visual impact of the skylight(s) on the roof plane)

### **Reflectivity Index of Glazing**

- C8. The reflectivity index (expressed as a per centum of the reflected light falling upon any surface) of external glazing for windows, walls or roof finishes of the proposed development is to be no greater than 20%. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Note: The reflectivity index of glazing elements can be obtained from glazing manufacturers. Glass with mirrored or reflective foil finishes is unlikely to achieve compliance with this requirement.

(Reason: To ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development)

### **Roofing Materials - Reflectivity**

- C9. Roofing materials must be factory pre-finished with low glare and reflectivity properties to be compatible with the colours of neighbouring buildings. The selected roofing material must not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development)

### **No External Service Ducts**

- C10. Service ducts must be provided within the building to keep external walls free of plumbing, drainage or any other utility installations. Fireplace flues to wall areas are permitted (not greater than 1 metre in height or greater than 50 centimetres in diameter per flue and not within 2 metres of the perimeter of the roof edge). Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure quality built form of the development)

### **Work Zone**

- C11. If a Work Zone is proposed, an application must be made to the North Sydney Local Traffic Committee to install the 'Work Zone'. A Work Zone permit is required to be issued by the Council prior to the issue of any Construction Certificate.

Work Zones are provided specifically for the set down and pick up of materials and not for the parking of private vehicles associated with the site. Work Zones will generally not be approved where there is sufficient space on-site for the setting down and picking up of goods being taken to or from a construction site. If the Work Zone is approved by the Committee, the Applicant must obtain a written copy of the related resolution from the North Sydney Local Traffic Committee and submit a copy of this to the Certifying Authority to enable issue of the Construction Certificate.

Where approval of the 'Work Zone' is given by the Committee, the requirements of the Committee, including installation of the necessary 'Work Zone' signage and payment of any fees, must occur prior to commencement of any works on the site. Further, at the expiration of the Work Zone approval, the developer is required to remove the Work Zone signs and reinstate any previous signs, all at the developer's cost. The requirements imposed by the Committee on the Work Zone permit (or permits) must be complied with at all times.

(Reason: Amenity and convenience during construction)

#### **Maintain Property Boundary Alignment Levels**

- C12. Except where otherwise approved by Council (including **Condition 17**), the property boundary alignment at the driveway crossovers must match the levels which existed prior to the commencement of works. Plans and specifications which document existing and proposed levels adjacent to the site boundaries and which comply with the requirements of this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure interface between property and public land remains uniform)

#### **Bicycle Storage and Parking**

- C13. The bicycle storage area must accommodate a minimum of 21 bicycles, and a visitor parking bicycle rail shall be provided for 3 visitor bicycles. The bicycle storage lockers and bicycle rail shall be designed in accordance with the applicable Australian Standards. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the building plans and specifications, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To promote and provide facilities for alternative forms of transport)

#### **Accessible Parking Spaces to be Provided**

- C14. A total of four (4) accessible parking spaces shall be provided as part of the total car-parking requirements. Consideration must be given to the means of access from the car-parking spaces to adjacent buildings, to other areas within the building and to footpath and roads. All details shall be prepared in consideration of, and construction completed in accordance with applicable Australian Standards to achieve compliance with the Disability Discrimination Act. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate.

(Reason: To ensure equity of access and appropriate facilities are available for people with disabilities in accordance with Federal legislation)

#### **Basement Car Park to comply with relevant standards**

- C15. The basement layout must comply with all requirements of Australian Standard AS2890.1. Certification from a suitably qualified and practicing Civil Engineer that the basement design will comply with the requirements of the Australian Standard must be provided to the Certifying Authority for approval prior to issue of the relevant Construction Certificate.

(Reason: To ensure the basement layout complies with relevant standards)

#### **Required Infrastructure Works - Roads Act 1993**

- C16. Prior to issue of the relevant Construction Certificate engineering design plans and specifications must be prepared by a qualified civil design engineer. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development. To obtain the permit, an application

must be made to Council on a 'Application to satisfy development consent' form with payment of the adopted assessment/inspection fees. The responsibility for accuracy of the design fully rests with the designing engineer. All responsibility on implementation and supervision of works specified on design plans fully rests on designing engineer or whoever is chosen to be applicant's engineering representative:

Road Works

- a) Construction of a fully new replacement concrete footpath is required across the entire site frontage in Ben Boyd Road.. The footpath shall be reconstructed at the present gradients ) so that it is uniform without showing signs of dipping or rising particularly at entrances.
- b) Cross sections at a scale of 1:50 along the centre-line of any access from the council footpath to the property must be provided All the entry points are to comply with the Building Code of Australia (BCA), including disability requirements. The Council approved footpath levels must be accommodated at the building entry points.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. Certifying Authorities must not issue a Construction Certificate without the formal written approval of Council (as Roads Authority) under the Roads Act 1993.

The required plans and specifications are to be designed in accordance with North Sydney Council's current documents Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works. A detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1-1996 - Field Guide for Traffic Control at Works on Roads - Part 1 and RMS Traffic Control at Work Sites (1998). Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.

Note: A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover cost of assessment (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

**Obtain Driveway Crossing Permit under S.138 Roads Act 1993**

C17. Prior to the issue of the relevant Construction Certificate, North Sydney Council must issue the applicant with a driveway crossing and road infrastructure works permit to suit the approved off-street parking facilities. To obtain the permit, an application must be made to Council on a 'Vehicular Access Application' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the applicant's Civil Engineer to verify design details and enable permit issue. The responsibility for accuracy of the design fully rests with the designing engineer. All responsibility on implementation and supervision of works specified on design plans fully rests on designing engineer or whoever is chosen to be applicant's engineering representative. The civil design drawings shall detail the following infrastructure construction requirements of Council in relation to the consent:

- a) The proposed vehicular access ways must comply with AS 2890.1 and Council's Version: 1, Version Date: 04/04/2022 Document Set ID: 8852993 current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor.
- b) The width of each vehicular layback must be 4.5 m (including the wings).

- c) The vehicular laybacks must be set square to the kerb.
- d) The crossing (between the layback and the property boundary) must be perpendicular on a single straight grade of approximately 2.5%, falling to the back of the layback.
- e) The boundary footpath levels must match the existing levels and shall not be altered unless agreed to by Council.
- f) Alignment levels at the boundary have an important impact on the proposed levels for new driveway. The works must not start until confirmation of boundary alignment levels from registered surveyor. Council has the authority to remove any unauthorized works at the cost of the property owner.
- g) The Certifying Authority must ensure that the internal property levels at boundary matches council's confirmed boundary levels.
- h) The gutter levels and road shoulder levels on both street frontages must stay unchanged.
- i) The kerb gutter, and 600 mm road shoulder wide- strip, adjacent to all new layback and gutter works, on both street frontages must be reconstructed, to ensure uniformity in the road reserve.
- j) Any twisting of driveway access to ensure vehicles do not scrape must occur wholly within the subject property.
- k) All inspection openings, utility services must be adjusted to match the proposed driveway levels and location.
- l) The design detail has to be provided with vehicular access application and must include sections along centerline and extremities of the crossing at a scale of 1:25. Sections are to be taken from the centre of the roadway through to the parking area itself and shall include all changes of grade and levels, both existing and proposed.
- m) A longitudinal section from the driveway crossing across the footpath at the property boundary at a scale of 1:50 is required and shall include all changes of grade and levels, both existing and proposed.
- n) The sections must show the calculated clearance to the underside of any overhead structure.
- o) A swept path analysis is required demonstrating that a 99<sup>th</sup> percentile vehicle can manoeuvre in and out of the car lifts in a forward direction and that an 85<sup>th</sup> percentile vehicle can manoeuvre in and out of the car spaces in accordance with AS 2890.1 2004 "Off Street Parking".

All driveway and infrastructure works on the road reserve must proceed in accordance with the terms of the permit issued by Council. Inspections by Council will be required as specified on the permit. The Certifying Authority issuing the Construction Certificate must ensure that the permit issued by Council is obtained prior to its issue, is referenced on and accompanies the relevant Construction Certificate issued.

(Reason: To facilitate appropriate vehicular access to private sites, without disruption to pedestrian and vehicular traffic)

### **Stormwater Management and Disposal Design Plan**

- C18. Prior to issue of the Construction Certificate, the applicant shall have a site drainage management plan prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:
- a) Compliance with BCA drainage requirements, Councils Engineering Performance guide and current Australian Standards and guidelines, such as AS/NZ3500.3.2 1998, National Plumbing and Drainage Code.
  - b) Stormwater runoff and subsoil drainage generated by the approved dwellings must be conveyed in a controlled manner by gravity via a direct connection to Council's stormwater pit in Premier Street. When a direct connection to the pit option is implemented then the pipeline within the footpath area shall have a minimum cover of 300 mm.
  - c) All civil and drainage works within the road reserve must be designed and built, in accordance with Council's current "Infrastructure Specification". Prior to issue of the Construction Certificate the applicant must have engineering plans and specifications, prepared by a qualified civil drainage design engineer. Council must approve the plans and specifications, in writing, prior to issue of the relevant Construction Certificate by the Certifying Authority. The documentation must provide engineering construction detail for the following public infrastructure works that must be completed as part of the approved development. Council reserve the right of keeping all bonds on infrastructure works for 12-month defects liability period.
  - d) All redundant stormwater pipelines within the footpath area shall be removed and the footpath and kerb reinstated.

- e) Any footpath panel on Premier Street disturbed for the purpose of stormwater connection shall be reconstructed as whole panel.
- f) All sub-soil seepage drainage shall be discharged via a suitable silt arrester pit. Details of all plans certified as being adequate for their intended purpose and compliant with the provisions of AS3500.3.2 by an appropriately qualified and practising civil engineer, shall be submitted with the application for a Construction Certificate.
- g) The design and installation of the Rainwater Tanks shall comply with Basix and Sydney Water requirements. Overflow from tank shall be connected by gravity to the stormwater disposal system.
- h) Provide subsoil drainage to all necessary areas with pump out facilities as required.

Details demonstrating compliance are to be submitted with the Construction Certificate. The Certifying Authority issuing the Construction Certificate must ensure that the approved drainage plan and specifications, satisfying the requirements of this condition, is referenced on and accompanies the Construction Certificate.

(Reason: To ensure controlled stormwater management and disposal without nuisance)

### **On-Site Stormwater Detention**

- C19. On site detention must be provided to ensure that the maximum discharge from the site does not exceed discharge which would occur during a 1 in 5-year storm for the time of concentration determined for the particular site, for the existing site conditions. All other stormwater run-off from the site for all storms up to the 1 in 100- year storm is to be retained on the site for gradual release to the kerb and gutter or drainage system. Provision is to be made for satisfactory overland flow should a storm in excess of the above parameters occur.

Determination of the required cumulative storage must be based using any other computer-based modelling technique.

Engineering calculations, design and certification complying with this condition must be provided by an appropriately qualified and practicing Civil Engineer and submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate.

(Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that public infrastructure in Council's care and control is not overloaded)

### **Pump-Out System Design for Stormwater Disposal**

- C20. The design of the pump-out system for stormwater disposal will be permitted for drainage of basement areas only, and must be designed in accordance with the following criteria: -

- a) The pump system shall consist of two pumps, connected in parallel, with each pump being capable of emptying the holding tank at the rate equal to the rate of inflow for the one-hour duration storm. The holding tank shall be capable of holding one hour's runoff from a one-hour duration storm of the 1 in 20-year storm;
- b) The pump system shall be regularly maintained and serviced, every six (6) months; and
- c) Any drainage disposal to the street gutter from a pump system must have a stilling sump provided at the property line, connected to the street gutter by a suitable gravity line.

Engineering details demonstrating compliance with these criteria and certified by an appropriately qualified and practicing civil engineer shall be provided to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate.

(Reason: To ensure adequate provision is made for the discharge of sub-surface stormwater from the excavated parts of the site)

**Bond for Damage and Completion of Infrastructure Works - Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement**

C21. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of **\$146,000.00** to be held by Council for the payment of cost for any/all of the following:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent.
- c) remedying any defects in any such public work that arise within six months after the work is completed.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of six months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following:

- where the damage constitutes a hazard in which case Council may make use of the security immediately;
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;
- works in the public road associated with the development are to an unacceptable quality; and
- the Certifying Authority must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

**Footpath, Entries and Fire Exit Details (Apartments)**

C22. Footpaths, entries and exits and fire exits for the development must be designed by an appropriately qualified and practising Civil Engineer and submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. The design must include (but is not limited to) the following:

- a) cross section along the centre-line of each access point to the building including fire exits at a scale of 1:50 to be taken from the centre of the road and shall include all changes of grade both existing and proposed;
- b) the sections must show all relevant levels and grades (both existing and proposed) including those levels stipulated as boundary levels;
- c) the sections must show the calculated clearance to the underside of any overhead structure;
- d) a longitudinal section along the boundary line showing how it is intended to match the internal levels of the building with the boundary footpath levels. The footpath must be designed at a single straight grade to match existing levels adjacent to the site boundary falling to the grass verge, so that it is smooth without showing signs of dipping or rising particularly at entrances;

Details, plans and specifications complying with this condition are to be certified as complying with the Building Code of Australia (BCA) and Council's standard footpath specifications, and the certification, details, plans and specifications must be provided to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. Written concurrence confirming there will be no change to

existing boundary and footpath levels is to be provided to the Certifier and North Sydney Council, prior to issue of the relevant Construction Certificate.

(Reason: To facilitate suitable pedestrian and disabled access to private sites, and to ensure that internal levels reflect footpath boundary levels)

### **Tree Bond for Public Trees**

C23. Prior to the issue of the relevant construction certificate, security in the sum of **\$65,000.00** must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate but only upon inspection and release by Council's Landscape Development Officer.

If any tree is removed or damaged Council may deduct from this security the reasonable cost of replacement with a tree of the same species and to a similar stage of growth it would have attained at the completion of the work.

In the case of any tree, which cannot be replaced with a similar specimen, the security for that tree will be forfeited to Council and used to provide replacement street plantings.

### **SCHEDULE**

T6-T12 *Magnolia Grandiflora* Planted in Council's Verge in front of 98 Ben Boyd Road

2 x *Lagerstroemia Indica* and associated under plantings of *Nandina domestica* and sandstone edging planted in Council's verge in front of 96 Ben Boyd Road

(Reason: Protection of existing environment public infrastructure, community assets and significant trees)

### **Tree Protection Measures to be shown on Construction Drawings**

C24. The tree protection measures contained in the arborist report prepared by Birds Tree Consultancy dated 8 March 2022 shall be shown clearly on the relevant Construction Certificate drawings.

- The trees to be protected shall have 1.8 m high steel mesh tree protection fencing installed prior to construction
- All trees on neighbouring sites shall be retained and protected in accordance with AS4970.
- Sensitive construction methods including hand excavation, pier and beam construction, and flexible location of piers/footings shall be used within the TPZ of any protected tree.
- Stormwater and other services shall not be directed through the TPZ of any protected tree
- The existing sandstone blocks shall be retained.

Plans and specifications showing the said tree protection measures must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure the construction plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that appropriate tree protection measures are shown on construction drawings)

### **Protection of Trees**

- C25. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 - Protection of trees on development sites:

Tree	Location	Height (m)
T6 <i>Magnolia grandiflora</i>	Council's verge	5.0 m
T7 <i>Magnolia grandiflora</i>	Council's verge	4.0 m
T8 <i>Magnolia grandiflora</i>	Council's verge	4.5 m
T9 <i>Magnolia grandiflora</i>	Council's verge	4.5 m
T10 <i>Magnolia grandiflora</i>	Council's verge	3.5 m
T11 <i>Magnolia grandiflora</i>	Council's verge	3.5 m
T12 <i>Magnolia grandiflora</i>	Council's verge	3.5 m
2 x <i>Lagerstroemia indica</i> and associated under plantings of <i>Nandina domestica</i> and the sandstone hedging	Council's verge in front of No. 96 Ben Boyd Road	

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

#### Pruning of Trees

- C26. No pruning shall be permitted to any of the protected trees nominated under this consent, and nor shall any pruning to any public trees be permitted for the purposes of obtaining site access, except where expressly permitted as per marked-up pictures submitted to Council's Landscape Development Officer for approval. All pruning works shall be carried out by a minimum AQF Level 3 qualified arborist in accordance with AS4373:

(Reason: Protection of existing environment public infrastructure, community assets and significant trees)

#### Landscaping

- C27. Landscaping provided shall be maintained for the life of the development and in accordance with the approved landscape maintenance strategy. Where vegetation dies, including trees approved as part of this consent, it/they must be replaced with new landscaping that achieves a similar height and form to that approved under development consent.

(Reason: To ensure the landscape amenity of the proposed development is maintained in accordance with approved plans.

#### Waste Management Plan

- C28. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of the relevant Construction Certificate. The plan must include, but not be limited to:

- The estimated volume of waste and method of disposal for the construction and operation phases of the development;
- The design of the on-site waste storage and recycling area; and
- Administrative arrangements for waste and recycling management during the construction process.

The approved Waste Management Plan must be complied with at all times in the carrying out of the development.



(Reason: To encourage the minimisation of waste and recycling of building waste)

### **Garbage and Recycling Facilities**

C29. An appropriate area must be provided within the premises for the storage of garbage bins and recycling containers and all waste and recyclable material generated by this premises. The following requirements must be met:

- a) all internal walls of the storage area must be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained with a tap in close proximity to facilitate cleaning;
- b) provision for the separation and storage in appropriate categories of material suitable for recycling;
- c) the storage area must be adequately screened from the street, with the entrance to the enclosures no more than 2 m from the street boundary of the property;
- d) if a storage facility is to be provided at another suitable location within the building, a complementary garbage bin holding bay must be provided no more than 2 m from the street boundary of the property;
- e) garbage enclosures serving residential units are not to be located within areas designated for non-residential uses; and
- f) garbage enclosures serving non-residential uses are not to be located within areas designated for dining purposes.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Note: The applicant may wish to discuss bin storage requirements and location with Council's Environmental Services prior to finalisation of the required detail, and a copy of Council's Waste Handling Guide should be obtained for reference purposes before the design is finalised.

(Reason: To ensure the provision of appropriate waste facilities for residents and protect community health, and to ensure efficient collection of waste by collection contractors)

### **Asbestos Material Survey**

C30. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a WorkCover licensed contractor;
- b) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the report, and other plans,

referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

#### Location of Plant

C31. All plant and equipment (including but not limited to air conditioning equipment) is to be located within the basement of the building or adjoining the car park lift shaft and is not to be located on balconies or the roof. Fireplace flues to roof areas are permitted (in accordance with **Condition C10**). Plans and specifications complying with this condition must be submitted to the Certifying Authority for Approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Minimise impact on surrounding properties, improved visual appearance and amenity for locality)

#### Noise from Plant and Equipment

C32. The use of all plant and equipment installed on the premises must not:

(a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.

(b) Cause "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*.

"affected receiver" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.

"boundary" includes any window or elevated window of an affected receiver.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

#### Vibration from Plant and Equipment

C33. The use of all plant and equipment to be installed on the premises must comply with the vibration limits specified in "Assessing Vibration: a technical guideline" issued by the NSW Environment Protection Authority, at the boundary of any affected receiver.

A certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants must be submitted to the Certifying Authority, certifying that all plant and equipment on the site, together with the proposed plant and equipment, operating contemporaneously will comply with the requirements of this condition.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

"affected receiver" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship and commercial premises and such other affected receiver as may be notified by the Council in writing.

"boundary" includes any window or elevated window of an affected residence.

"contemporaneously" means *existing at or occurring in the same period of time* (Macquarie Dictionary 3rd rev. ed. 2004).

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

#### Air Conditioners in Residential Premises

C34. The use of any air conditioner installed on the premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulations 2008 and State Environmental Planning Policy (Infrastructure) 2007 and must not:

- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
  - (i) before 8.00 am and after 10.00 pm on any Saturday, Sunday or Public Holiday; or
  - (ii) before 7.00 am or after 10.00 pm on any other day
- (b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy will be applied.

"affected residence" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

"boundary" includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain residential amenity)

#### Acoustic Privacy (Residential Apartments)

C35. Noise levels in sole occupancy units of residential apartments must not exceed the following:

Location	Maximum
Habitable Rooms other than Sleeping Areas	40 LAeq (1hr)
Sleeping Areas	35 LAeq (1hr)

The "Maximum" limits are to apply in any hour of a 24-hour period with the windows of the sole occupancy unit closed.

"habitable room" has the same meaning as in the Building Code of Australia.

A floor separating sole occupancy units shall have a weighted standardised impact sound pressure level  $L'_{nT,w}$  not more than 55dB when measured in-situ in accordance with AS ISO 140.7-2006 "Field measurements of impact sound insulation of floors" and rated to AS ISO 717.2-2004 "Rating of sound insulation in buildings and of building elements. Part 2: Impact sound insulation". This clause shall not apply to the floor of a kitchen, bathroom, toilet or laundry in a residential sole occupancy unit. Mechanical equipment such as lift plant, air conditioning plant servicing the building and pumps shall not be located immediately adjacent bedrooms.

A statement from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that the acoustic mitigation measures outlined above have been satisfied, must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate.

(Reason: To comply with best practice standards for residential acoustic amenity)

#### Noise and Vibration Compliance Certification Prior to Issue of Construction Certificate

- C36. A certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that suitable measures have been incorporated into the development and that the noise criteria contained in the conditions herein have been satisfied, must be provided to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate.

The Principal Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

### **Mechanical Exhaust Ventilation**

- C37. A statement from an appropriately qualified and practising Mechanical Engineer is required detailing how the exhaust ventilation system will be installed in accordance with AS1668. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure compliance with acceptable standards for the construction and operation of mechanical plant)

### **Construction Noise Management Plan**

- C38. A Construction Noise Management Plan must be prepared by an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, and must include the following:

- (a) Identification of noise affected receivers near to the site.
- (b) A prediction as to the level of noise impact at noise affected receivers from the use and proposed number of high noise intrusive appliances intended to be operated onsite.
- (c) Details of work schedules for all construction phases;
- (d) A statement should also be submitted outlining whether or not predicted noise levels will comply with the noise criteria stated within the Environment Protection Authority's Interim Construction Noise Guideline ("ICNG").
- (e) Representative background noise levels should be submitted in accordance with the ICNG.
- (f) Confirmation of the level of community consultation that is to be undertaken by occupants at noise affected receivers likely to be most affected by site works and the operation of plant/machinery particularly during the demolition and excavation phases.
- (g) Confirmation of noise monitoring methodology that is to be undertaken during the noise intensive stages of work including details of monitoring to be undertaken at the boundary of any noise affected receiver.
- (h) What course of action will be undertaken following receipt of a complaint concerning offensive noise?
- (i) Details of any noise mitigation measures that have been outlined by an acoustic consultant or otherwise that will be deployed on site to reduce noise impacts on the occupants at noise affected receivers.
- (j) Details of selection criteria for any plant or equipment that is to be used on site, the level of sound mitigation measures to be undertaken in each case and the criteria adopted in their selection taking into account the likely noise impacts on occupants at noise affected receivers and other less intrusive technologies available; and
- (k) Details of site induction to be carried out for all employees and contractors undertaking work at the site.

“affected receiver” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.  
“boundary” includes any window or elevated window of an affected residence.

The Construction Noise Management Plan and must be submitted to the Principal Certifying Authority and a copy provided to Council prior to the issue of the Construction Certificate.

(Reason: To ensure noise generating activities are appropriately managed and nearby sensitive receivers protected)

### **Provision of Accessible Paths of Travel**

C39. The building must be designed and constructed to provide access and facilities in accordance with the National Construction Code and Disability (Access to Premises - Buildings) Standards 2010. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

#### **Notes:**

1. If, in complying with this condition, amendments to the development are required, the design changes must be submitted for the approval of Council prior to a Construction Certificate being issued. Approval of a modification application may be required.
2. It is not within Council’s power to set aside National legislation which requires the upgrade of buildings to meet modern access standards. Such decisions remain the jurisdiction of the Building Professionals Board Access Advisory Committee who may grant an exemption in certain exceptional circumstances.
3. Information on making an application for an “unjustifiable hardship exemption” under the accessibility standards can be found in the website of the NSW Building Professional Boards at <http://www.bpb.nsw.gov.au/page/premises-standards>.

(Reason: To ensure the provision of equitable and dignified access for all people in accordance with disability discrimination legislation and relevant Australian Standards)

### **Underground Electricity and Other Services**

C40. All electricity and telecommunication provision to the site is to be designed in conjunction with Energy Australia and any other relevant authority so that it can be easily connected underground when the street supply is relocated underground. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To provide infrastructure that facilitates the future improvement of the streetscape by relocation of overhead lines below ground)

### **Adaptable Housing**

C41. The four (4) adaptable apartments are to be designed with accessible features for disabled persons and must incorporate level entries and wider doorways and corridors, slip resistant surfaces and reachable power points. These features are to be designed generally in accordance with the relevant Australian Standard 4299-1995. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure equity of access and availability of accommodation in the future for an ageing population)

**Section 7.11 Contributions**

- C42. A monetary contribution pursuant to the provisions of Section 7.11 of the *Environmental Planning and Assessment Act 1979* is to be paid to Council, in accordance with the North Sydney Council's Contribution Plan, to provide for local infrastructure improvements.

Based on the cost of development at the date of determination, the total contribution payable to Council is \$128,783.92

<b>A</b>	<b>B (\$)</b>
Open space & recreation facilities	\$70,914.17
Public domain	\$39,475.82
Active transport	\$2,253.13
Community facilities	\$14,243.44
Plan administration and management	\$1,897.37
	<u>\$128,783.92</u>
The total contribution is	<u>\$ 128,783.92</u>

**Indexation**

The monetary contribution required under this consent will be indexed at the time of payment in accordance with quarterly movements in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

**Timing of Payment**

The contribution must be paid to Council prior to issue of the first Construction Certificate for any work approved by this consent.

A copy of the North Sydney Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au).

(Reason: To provide for local infrastructure identified in the North Sydney Council Local Contributions Plan 2020)

**Security Deposit/Guarantee Schedule**

- C43. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of the relevant any Construction Certificate:

<b>Security Deposit/Guarantee</b>	<b>Amount (\$)</b>
Infrastructure Damage Bond	\$96,000.00
Engineering Construction Bond	50,000.00
Tree Bond	\$65,000.00
<b>TOTAL BONDS</b>	<b>\$211,000.00</b>

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

Note: The following contributions are applicable

<b>Fees</b>	
Section 7.11 Contribution	\$128,783.92
<b>TOTAL CONTRIBUTIONS</b>	<b>\$128,783.92</b>

(Reason: Compliance with the development consent)

### **BASIX Certificate**

C44. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. **1273153M\_03**, dated 21 November 2022, for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

### **Outdoor Lighting**

C45. All outdoor lighting must comply with, where relevant AS/NZ1158.3:1999 Pedestrian Area (Category P) Lighting and AS4282:1997 Control of the Obtrusive Effects of Outdoor lighting. Details demonstrating compliance with these requirements must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To maintain the amenity of adjoining land uses)

### **Telecommunication Infrastructure provision**

C46. Prior to the issue of the Subdivision or Construction Certificate in connection with a development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:

- (i) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose, and
- (ii) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

All such facilities shall be underground if within or visible from a current or future public place.

Note: Real estate development project has the meanings given in section 372Q of *the Telecommunications Act*.

(Reason: To ensure that modern telecommunications infrastructure is provided in respect of all premises to be constructed in developments)

### **Charging Facility for Electric Vehicles**

C47. Appropriate provisions/infrastructure must be incorporated in the design of the basement carpark to allow the installation of charging facilities for electric vehicles for up to 7 parking spots.

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To promote sustainability and energy efficiency)

### **Parking Design**

C48. The design, layout, signage, line marking, lighting and physical controls of all off-street parking facilities must comply with the minimum requirements of Australian Standard AS/NZS 2890.1 Off-street car parking, AS 2890.3 Bicycle parking and AS/NZS 2890.6 Off-street parking for people with disabilities.

The details must be submitted to and approved by the Principal Certifying Authority prior to a Construction Certificate being issued.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

**Pedestrian Sight Distance at Vehicular Exit Driveway**

C49. A pedestrian sight triangle of 2.0 metres by 2.5 metres is to be provided on both sides of the vehicular egress driveway in accordance with AS2890.1:2004. Any variation to this sight distance requirement would need to be assessed by an appropriately qualified traffic engineer and supplemented with additional traffic control devices such as convex mirrors at the egress to assist with sight lines, with the variation to not result in any detrimental impact in terms of pedestrian safety. Details demonstrating compliance with the requirements of this condition are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

(Reason: To ensure pedestrian safety at the site exit driveway)

**D. Prior to the Commencement of any Works (and continuing where indicated)**

**Protection of Trees**

D1. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation and construction on the site in accordance with AS4970-2009 (Protection of trees on development sites). A report containing recommendations, and methods of tree protection prepared by an appropriately qualified person must be provided to the Certifying Authority for approval by an appropriately qualified person prior to commencement of any works on the site. Any recommendations must be undertaken for the duration of works on the site.

(Reason: To ensure compliance with the requirement to retain significant planting on the site)

**Tree Protection Measures**

D2. The tree protection measures detailed in the arborist report prepared by Birds Tree Consultancy dated 8 March 2022, and as directed by the project arboriculturist shall be established before work commences.

(Reason: To ensure that the stability and ongoing viability of trees being retained are not compromised Tree protection measures)

**Project Arborist to be Engaged**

D3. The project arboriculturist with an AQF Level 5 qualification shall inspect tree protection measures and certify in writing to the Principal Certifying Authority the measures comply with the approved Tree Protection Plan and as directed by the project arboriculturist before work commences.

The project arboriculturist shall provide guidance and oversight of tree protection and management to ensure that the stability and ongoing viability of trees being retained is not compromised.

The project arboriculturist must contact the tree pruning contractor and Council's Tree Management Officer (giving at least 2 working days' notice) to arrange a joint site meeting, prior to commencing any pruning, to determine the exact location and extent of pruning that is permissible, with the tree pruning contractor to comply with any instructions issued by Council, acting reasonably.

Any pruning must be undertaken by a practicing arborist with a minimum Australian Qualification Framework Level 3 in arboriculture, in accordance with the principles of the Australian Standard AS 4373-2007 'Pruning of Amenity Trees,' and the NSW Work Cover Code of Practice for the Amenity Tree Industry (1998), as well as any instructions issued on site by Council, acting reasonably.



The practicing arborist must keep a log of dates and times of when they attended the site, the type of works that were performed, and must form part of the certification required prior to Occupation.

(Reason: Tree protection measures)

#### **Public Liability Insurance – Works on Public Land**

- D4. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

Note: Applications for hoarding permits, vehicular crossings etc. will require evidence of insurance upon lodgement of the application.

(Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land)

#### **Notification of New Addresses**

- D5. Prior to the commencement of any building works, an application must be made and written confirmation received from North Sydney Council of the allocated street address (house number) and/or unit numbers of the completed project.

To assist Council, a plan for unit numbering should be submitted for concurrence. These details will be recorded in Council records and must be displayed at the property in accordance with the provisions of the applicable Australian Standard relating to rural and urban addressing. A copy of the allocation confirmation must be submitted to the Certifying Authority with the application for a Construction Certificate.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties)

#### **Sydney Water Approvals**

- D6. Prior to the commencement of any works, the approved plans must be submitted to Sydney Water to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The Certifying Authority must ensure that Sydney Water has appropriately stamped the plans before the commencement of building works.

Notes: **Sydney Water Building Plan Approvals** can be obtained from the Sydney Water Tap in™ online service. Building plans must be submitted to the Tap in™ to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. For further information visit <http://www.sydneypwater.com.au/tapin/index.htm> or call 13 000 TAP IN (1300 082 746) for further information.

(Reason: To ensure compliance with Sydney Water requirements)

#### **Asbestos Material Survey**

- D7. Prior to the commencement of any works, a report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination. Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a WorkCover licensed contractor;
- b) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

### **Commencement of Works' Notice**

- D8. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

(Reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

### **E. During Demolition and Building Work**

#### **Parking Restrictions**

- E1. Existing public parking provisions in the vicinity of the site must be maintained at all times during works, except where approved as construction zone under the approved construction management plan. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition and will incur any fines associated with enforcement by Council regulatory officers.

(Reason: To ensure that existing kerbside parking provisions are not compromised during works)

#### **Road Reserve Safety**

- E2. 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, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. 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 in when and as directed by Council officers (at full Developer cost). 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 (1996) "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: Public Safety)

#### **Service Adjustments**

- E3. Where required, the adjustment or inclusion of any new utility service facilities must be carried out by

the person acting on the consent and in accordance with the requirements of the relevant utility authority. These works shall be at no cost to Council. It is the Applicants full responsibility to make contact with the relevant utility authorities to ascertain the impacts of the proposal upon utility services at the appropriate stage of the development (including water, phone, gas and the like). Council accepts no responsibility whatsoever for any matter arising from its approval of this application involving any influence upon utility services provided by another authority.

(Reason: To ensure the service requirements are met)

#### **Temporary Disposal of Stormwater Runoff**

E4. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures must be to the satisfaction of the Certifying Authority.

(Reason: Stormwater control during construction)

#### **Structures Clear of Drainage Easements**

E5. It is the full responsibility of the Developer and their contractors to:

- a) Ascertain the exact location of the Council drainage infrastructure traversing the site in the vicinity of the works;
- b) Take full measures to protect the in-ground Council drainage system; and
- c) Ensure dedicated overland flow paths are satisfactorily maintained through the site.

Drainage pipes can be damaged through applying excessive loading (such as construction plant, material storage and the like). All proposed structures and construction activities are to be located clear of Council drainage pipes, drainage easements, watercourses and trunk overland flow paths on the site. Trunk or dedicated overland flow paths must not be impeded or diverted by fill or structures unless otherwise approved.

In the event of a Council drainage pipeline being uncovered during construction, all work is to cease and the Certifying Authority and Council (if it is not the Certifying Authority) must 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.

(Reason: Protection of Public Drainage Assets)

#### **Geotechnical Stability during Works**

E6. 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 procedure.

Geotechnical aspects of the development work, namely appropriate excavation method and vibration control, support and retention of excavated faces, and hydrogeological considerations must be undertaken in accordance with the recommendations of the reported prepared to satisfy **Condition C4** and all subsequent geotechnical inspections carried out during the excavation and construction phase.

Approval must be obtained from all affected property owners, including North Sydney Council where rock anchors (both temporary and permanent) are proposed below adjacent private or public property.

(Reason: Ensure appropriate professional are engaged at appropriate stages during construction)

**Council Inspection of Public Infrastructure Works**

E7. During the works on public infrastructure reverting to Council's care and control, Council's development engineer may undertake inspections of the works at the following hold points:

- a) Vehicular Access and associated road civil works; and
- b) Stormwater connection

All works must proceed in accordance with Roads Act 1993 approvals or other permits relating to roads issued by Council. A minimum of 48 hours' notice must be given to Council to book an inspection. Work must not proceed until the works or activity covered by the inspection is approved.

(Reason: To ensure quality of construction joints and connections in the drainage system)

**Progress Survey**

E8. In order to ensure compliance with approved plans, a Survey Certificate, prepared to Australian Height Datum, must be prepared by a Registered Surveyor showing the following:

- a) at the completion of excavation, prior to the placement of any footings, showing the completed level of the excavation and its relationship to the boundaries;
- b) prior to placement of concrete at the ground floor level, showing the level of the form work and its relationship to boundaries including relevant footpath and roadway levels;
- c) prior to placement of concrete at each fifth-floor level showing the principal level of the formwork and the intended relationship of the completed works to the boundary;
- d) prior to roofing, or completion of the highest point of the building showing the anticipated level of the completed work and its relationship to the boundary; and
- e) at completion, works showing the relationship of the building to the boundary and showing the maximum height of the overall works and the height of the principal roof elements.

Progress certifications in response to points (a) through to (e) must be provided to the Certifying Authority for approval at the time of carrying out relevant progress inspections. In the event that such survey information is not provided or reveals discrepancies between the approved plans and the proposed works, all works, save for works necessary to bring the development into compliance with the approved plans, must cease. Works may only continue upon notification by the Certifying Authority to the Applicant that survey information (included updated survey information following the carrying out of works to comply with the approved plans) complies with this condition.

(Reason: To ensure compliance with approved plans)

**Removal of Extra Fabric**

E9. Should any portion of the existing building, trees, or curtilage of the site which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification of the damage is to be given to Council forthwith. No work is to resume until the written approval of the Manager of Development Services is obtained. Failure to comply with the provisions of this condition may result in the Council taking further action including legal proceedings if necessary.

(Reason: To ensure compliance with the terms of this development consent)

**Dust Emission and Air Quality**

E10. The following must be complied with at all times:

- (a) Materials must not be burnt on the site.
- (b) Vehicles entering and leaving the site with soil or fill material must be covered.

- (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.
- (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

**Noise and Vibration**

- E11. The works must be undertaken in accordance with the "Interim Construction Noise Guideline" published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

**Compliance with Construction Noise Management Plan**

- E12. All works conducted on site which form part of this development must be carried out in accordance with the submitted Construction Noise Management Plan submitted with the Construction Certificate and all conditions of consent.

(Reason: To ensure noise generating activities are appropriately managed and nearby sensitive receivers protected)

**No Work on Public Open Space**

- E13. No work can be undertaken within adjoining public lands (i.e., Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

(Reason: Protection of existing public infrastructure and land and to ensure public safety and proper management of public land)

**Applicant's Cost of Work on Council Property**

- E14. The applicant must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

(Reason: To ensure the proper management of public land and funds)

**No Removal of Trees on Public Property**

- E15. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

**Protection of Trees**

- E16. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. All recommendations contained within the tree report prepared by Birds Tree Consultancy dated 8 March 2022 must be implemented for the duration of the works.

In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

- a. If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.
- b. An application to modify this consent pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979 will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

**Benchmarks**

- E17. All permanent survey markers must be retained, undamaged, and not relocated.

(Reason: Protection of existing environmental infrastructure and community assets)

**Special Permits**

- E18. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

The developer, owner or builder may apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property. In the event that a permit is granted by Council for the carrying out of works, processes, storage of materials, loading and unloading associated with the development on Council's property, the development must be carried out in accordance with the requirements of the permit. A minimum of forty-eight (48) hours' notice is required for any permit:

1) **On-street mobile plant**

E.g., cranes, concrete pumps, cherry-pickers, etc. - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the developer's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

(Reason: Proper management of public land)

2) **Hoardings**

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

(Reason: Proper management of public land)

3) **Storage of building materials and building waste containers (skips) on Council's property**

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

(Reason: Proper management of public land)

4) **Kerbside restrictions, construction zones**

Attention is drawn to the existing kerbside restrictions adjacent to the development. Should alteration of existing kerbside restrictions be required, or the provision of a construction zone, the appropriate application must be made and the fee paid to Council. Alternatives to such

restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)

**Construction Hours**

E19. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

Location	Standard Construction Hours	
	Day	Hours
R4 zone	Monday - Friday	7.00 am - 5.00 pm
	Saturday	8.00 am - 1.00 pm
	Sunday, Public holiday	No work permitted

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above and any Construction Noise Management Plan required under this consent.

In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the EP&A Act 1979 and in accordance with Council's adopted Compliance and Enforcement Policy.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

**Out-of-Hours' Work Permits**

E20. Where it is necessary for works to occur outside those hours allowed by these conditions, an application may be made to Council's Customer Services Centre for a permit to carry out works outside of the approved hours. If a permit is issued the works approved must be carried out in accordance with any requirements specified in the permit. Permits will only be approved if **public safety is at risk**. Applications which seek a variation to construction hours solely to benefit the developer will require the lodgement and favourable determination of a modification application pursuant to the provisions of Section 4.55 of the Environmental Planning and Assessment Act 1979.

Notes:

- 1) Failure to obtain a permit for work outside of the approved hours will result in on the spot fines being issued, or Council pursuing any action required (including legal proceedings) to have the out of hours work cease, without prior warning.
- 2) Applications for out of hour's works should be lodged with Council no later than seven (7) calendar days prior to the date of the intended works.
- 3) Examples of activities for which permits may be granted include:
  - the erection of awnings,
  - footpath, road and other infrastructure works which cannot be carried out for public convenience reasons within normal hours,
  - the erection and removal of hoardings and site cranes, and
  - craneage of materials which cannot be done for public convenience reasons within normal working hours.
- 4) Examples of activities for which permits WILL NOT be granted include;
  - extended concrete pours
  - works which are solely to convenience the developer or client, and
  - catch up works required to maintain or catch up with a construction schedule.
- 5) Further information on permits can be obtained from the Council website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au).

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

### **Installation and Maintenance of Sediment Control**

- E21. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate.

Erosion and sediment measures must be maintained in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th edition, Landcom, 2004), commonly referred to as the "Blue Book" and can only be removed when development activities have been completed and the site fully stabilised.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

### **Sediment and Erosion Control Signage**

- E22. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

### **Site Amenities and Facilities**

- E23. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of workplace determines the type of amenities required.

Further information and details can be obtained from the Internet at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

(Reason: To ensure the health and safety of the community and workers on the site)

### **Health and Safety**

- E24. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

(Reason: To ensure the health and safety of the community and workers on the site)

### **Prohibition on Use of Pavements**

- E25. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

### **Plant and Equipment Kept Within Site**

- E26. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.



Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au).

(Reason: To ensure public safety and amenity on public land)

#### **Waste Disposal**

E27. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

(Reason: To ensure the lawful disposal of construction and demolition waste)

#### **Asbestos Removal**

E28. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

(Reason: To ensure works are carried out in accordance with relevant WorkCover requirements)

#### **Community Information**

E29. The surrounding properties must be kept regularly informed regarding the progress and likely timeframes for all stages of demolition, excavation and construction. Prior to the commencement of any noisy building works, as defined by the EPA including demolition and excavation, a minimum of 48 hours' notice must be given to the residents of properties identified in this condition. The project manager for the development must keep the residents informed by way of either public meetings, letters or site notices. The name of the project manager including a contact number to be answered at all times when site activities are occurring must be provided to all residents identified by this condition. Any justifiable complaints made by any resident must be immediately addressed by the Project Manager to minimise impacts on the surrounding residents.

(Reason: To ensure that all surrounding residents are kept informed of activities that may affect their amenity)

#### **Developer's Cost of Work on Council Property**

E30. The developer must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas. No occupation fees on Council land will be imposed during the stone wall restoration works in accordance with Condition A5.

(Reason: To ensure the proper management of public land and funds)

#### **Prohibition on Use of Pavements**

E31. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

#### **F. Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation**

##### **National Construction Code**

F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

### Home Building Act

- F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) for which the *Home Building Act* 1989 requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:
- a) in the case of work for which a principal contractor is required to be appointed:
    - i) the name and licence number of the principal contractor, and
    - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
  - (b) in the case of work to be done by an owner-builder:
    - (i) the name of the owner-builder, and
    - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this condition is out of date, work must cease and no further work may be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

(Reason: Prescribed - Statutory)

### Appointment of a Principal Certifying Authority (PCA)

- F3. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifying Authority for the building work in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

### Construction Certificate

- F4. Building work, demolition or excavation in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the building work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

### Occupation Certificate

- F5. A person must not commence occupation or use of the whole or any part of a new building (*new building* includes an altered portion of, or an extension to, an existing building) unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifying Authority appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

### Mandatory Critical Stage Inspections

- F6. Building work must be inspected by the Principal Certifying Authority on the critical stage occasions

prescribed by the EP&A Act and its Regulations, and as directed by the appointed Principal Certifying Authority.

(Reason: Statutory)

### **Excavation/Demolition**

- F7. 1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- 3) Demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

### **Protection of Public Places**

- F8. 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
- 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- 5) No access across public reserves or parks is permitted.

Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained. Any application needs to be accompanied by plans indicating the type of hoarding and its layout. Fees are assessed and will form part of any approval given. These fees must be paid prior to the approval being given. Approval for hoardings will generally only be given in association with approved building works, maintenance or to ensure protection of the public. An application form for a Hoarding Permit can be downloaded from Council's website.

(Reason: To ensure public safety and the proper management of public land)

### **Site Sign**

- F9. 1) A sign must be erected in a prominent position on the site
- a) stating that unauthorised entry to the work site is prohibited;
- b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
- c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while to building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

**G. Prior to the Issue of an Occupation Certificate**

**Infrastructure Repair and Completion of Works**

G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:

- a. in the road reserve must be fully completed; and
- b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of public assets)

**Certification - Civil Works**

G2. a) An appropriately qualified and practising Civil Engineer must certify to the Certifying Authority that the stormwater drainage system is constructed in accordance with this consent and the provisions of the applicable Australian Standard. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority) upon completion of the development works and prior to the issue of an Occupation Certificate.

- b) An appropriately qualified and practicing Civil Engineer must certify to the Certifying Authority that the vehicular crossing and associated works and road works were constructed in accordance with this consent and any approval for works in the road reserve issued by the Council. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority), upon completion of the development works and prior to the issue of an Occupation Certificate.

(Reason: Compliance with the Consent)

**Utility Services**

G3. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

(Reason: To ensure compliance with the terms of this consent)

**Covenant and Restriction (Stormwater Control Systems)**

G4. An Instrument pursuant to Sections 88B and 88E of the Conveyancing Act 1919 and one copy must be submitted to Council in registrable form, providing for:

- a. a restriction as to user and positive covenant as to user as appropriate in favour of North Sydney Council burdening 96-98 Ben Boyd Road requiring the ongoing retention, maintenance and operation of the stormwater facility (onsite detention, pump-out, charged lines);
- b. North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument;
- c. the wording on the Instrument making reference to the Council file/s which hold:
  - (a) the Construction plans; and
  - (c) the "Work-as-Executed" (as built) plans;

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council's official seal will be affixed to these documents, prior to submission to the NSW Land Registry Services Office for registration.

The Instrument creating the restriction and/or covenant under ss 88B and 88E required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier.

Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of an Occupation Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: Compliance and adequate maintenance of drainage system)

#### **Basement Pump-Out Maintenance**

- G5. Prior to issue of an Occupation Certificate a Maintenance Regime must be prepared for the basement stormwater pump-out system and submitted to the Principal Certifying Authority for approval with the Occupation Certificate documentation. The regime must specify that the system is to be regularly inspected and checked by qualified practitioners.

The basement stormwater pump-out system must be maintained in accordance with the approved Maintenance Regime at all times.

(Reason: To ensure future provision for maintenance of the drainage system)

#### **Noise Certification**

- G6. Prior to issue of the any Occupation Certificate a certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants is to be submitted to, and approved by, the Certifying Authority certifying that the noise and vibration from use of the development complies with the conditions of consent here-in.

(Reason: To ensure acoustic amenity)

#### **Certification - Civil Works**

- G7. a) An appropriately qualified and practising Civil Engineer must certify to the Certifying Authority that the stormwater drainage system is constructed in accordance with this consent and the provisions of the applicable Australian Standard. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority) upon completion of the development works and prior to the issue of an Occupation Certificate.
- b) An appropriately qualified and practicing Civil Engineer must certify to the Certifying Authority that the vehicular crossing and associated works and road works were constructed in accordance with this consent and any approval for works in the road reserve issued by the Council. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority), upon completion of the development works and prior to the issue of an Occupation Certificate.

(Reason: Compliance with the Consent)

#### **Works as Executed Drawings**

- G8. A works-as-executed survey drawing (W.A.E.) of the completed stormwater drainage system must be obtained. The W.A.E. survey drawing must show the alignment, depth and grade of the stormwater drainage pipelines, pits and ancillary plumbing. The W.A.E. survey drawing must be reviewed by a qualified and practising civil engineer and certification provided to the Certifying Authority that the as-built system achieves the design intent of the plans approved with the Construction Certificate. Certification must be provided with the W.A.E. survey drawing to the Certifying Authority prior to the issue of an Occupation Certificate.

A copy of the W.A.E. survey drawing and certification must be submitted to the Council if it is not the Certifying Authority.

(Reason: Compliance with the Consent)

**Damage to Adjoining Properties**

- G9. On completion of the development the subject of this consent and prior to the issue of the Occupation Certificate, a report is to be prepared by an appropriately qualified consultant and is to be provided to the Certifying Authority (and a copy to Council if it is not the Certifying Authority) certifying:
- a) whether any damage to adjoining properties has occurred as a result of the development;
  - b) the nature and extent of any damage caused to the adjoining property as a result of the development;
  - c) the nature and extent of works required to rectify any damage caused to the adjoining property as a result of the proposed development;
  - d) the nature and extent of works carried out to rectify any damage caused to the adjoining property as a result of the development; and
  - e) the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property as a result of the development.

The report and certification must reference the dilapidation survey and reports required to be provided to the Certifying Authority in accordance with this consent.

Where works required to rectify any damage caused to adjoining property as a result of the development identified in the report and certification have not been carried out, a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible prior to the issue of an Occupation Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the developer.

(Reason: To ensure adjoining owner's property rights are protected in so far as possible)

**Utility Services**

- G10. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

(Reason: To ensure compliance with the terms of this consent)

**Notification of New Address Developments**

- G11. Prior to any Occupation Certificate being issued, the person acting upon this consent must comply with the following: -

- (a) Notify Australia Post of the address(es) as issued by Council and the location in plan form of any secondary, internal addresses, in relation to built public roads. Check Australia Post Website ([www.auspost.com.au](http://www.auspost.com.au)) to find your nearest Australia Post Delivery Facility.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties)

**Asbestos Clearance Certificate**

- G12. For building works where asbestos based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to and approved by the Certifying Authority (and a copy forwarded to Council if it is not the Certifying Authority) for the building work prior to the issue of any Occupation Certificate, the asbestos clearance certificate must certify the following:

- a) the building/land is free of asbestos; or
- b) the building/land has asbestos that is presently deemed safe.

The certificate must also be accompanied by tipping receipts, which detail that all asbestos waste has been disposed of at an approved asbestos waste disposal depot. If asbestos is retained on site the certificate must identify the type, location, use, condition and amount of such material.

Note: Further details of licensed asbestos waste disposal facilities can be obtained from [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au).

(Reason: To ensure that building works involving asbestos based products are safe for occupation and will pose no health risks to occupants)

### Certification of Tree Condition

G13. Prior to the issue of an Occupation Certificate, a report prepared by an arboriculturist with AQF Level 5 qualification must be submitted to the Certifying Authority, describing the health of the tree(s) specifically nominated below:

Tree	Location	Height (m)
T6 <i>Magnolia grandiflora</i>	Council's verge	5.0 m
T7 <i>Magnolia grandiflora</i>	Council's verge	4.0 m
T8 <i>Magnolia grandiflora</i>	Council's verge	4.5 m
T9 <i>Magnolia grandiflora</i>	Council's verge	4.5 m
T10 <i>Magnolia grandiflora</i>	Council's verge	3.5 m
T11 <i>Magnolia grandiflora</i>	Council's verge	3.5 m
T12 <i>Magnolia grandiflora</i>	Council's verge	3.5 m
2 x <i>Lagerstroemia indica</i> and associated under plantings of <i>Nandina domestica</i> and the sandstone hedging	Council's verge in front of No. 96 Ben Boyd Road	

The report must detail the condition and health of the nominated tree(s) upon completion of the works and shall certify that the tree(s) has/have not been significantly damaged during the works on the site and has/have reasonable prospects for survival.

(Reason: To ensure compliance with the terms of this consent)

### Certification of Landscaping

G14. A qualified landscape architect/designer is to inspect the installed landscaping and provide written certification to Council or the Accredited Certifier that the landscape is in accordance with the approved landscape plans and amendments required under this Consent and completed to a professional standard consistent with industry best practice and published standards.

(Reason: To ensure the approved landscaping is completed and performs in accordance with the requirements of this consent)

### Sydney Water

G15. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained.

The final Section 73 Certificate must be submitted to the Certifying Authority prior to occupation of the development.

Notes: Application must be made through an authorised Water Servicing Co-ordinator, for details see the Sydney Water web site [www.sydneywater.com.au/customer/urban/index](http://www.sydneywater.com.au/customer/urban/index), or telephone 13 20 92.

Following application, a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

(Reason: To ensure compliance with the statutory requirements of Sydney Water)

**BASIX Completion Certificate**

G16. In accordance with Clause 154C of the *Environmental Planning and Assessment Regulation 2000*, prior to issuing a final occupation certificate the Certifying Authority must apply to the Director-General for a BASIX completion receipt.

(Reason: To ensure compliance with the specified BASIX Certificate)

**House Numbering (Dwellings)**

G17. Prior to any Occupation Certificate being issued an application must be made to North Sydney Council for written confirmation, or allocation, of the street address(es) or apartment number(s) for the completed project in accordance with Council's Property Addressing Policy. These are the numbers that will be recorded in Council records and must be displayed at the property in accordance with the provisions of AS/NZS 4819:2011.

Note: If apartments are to be sold off the plan, the applicant must have written confirmation from Council of the address and apartment numbering if the apartment number is to be identified on the contract.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties.)

**Verification Statement (External Finishes and Materials)**

G18. Prior to the issue of any Occupation Certificate, a verification statement from a qualified designer or architect (preferably the original designer), must be submitted to Council and the Certifying Authority certifying that the external finishes and materials are in accordance with the approved schedule of finishes and materials identified in this consent.

*"qualified designer"* means a person registered as an architect in accordance with the Architects Act 2003 cf 50(1A) EP&A Regs 2000.

(Reason: To ensure the design quality and finishes for residential flat development)

**Unpaved Verge**

G19. The unpaved verge area must be constructed/reconstructed with an appropriate species of grass prior to completion of the works at no cost to Council.

(Reason: To ensure that community assets are presented in accordance with reasonable community expectations)

**Intercom**

G20. An intercom system must be provided in a convenient location adjacent to the visitor parking entry to enable easier and safe access to visitor parking prior to issue of any occupation Certificate.

(Reason: To ensure convenient access is available for visitors to the building)

**Allocation of Spaces**

G21. Car parking spaces must be provided and maintained at all times on the subject site. The spaces shall be allocated to uses within the building in accordance the following table:

<b>Residential</b>	<b>Parking Spaces</b>
Residential (including 4 accessible spaces)	29
Visitor (excluding carwash bay)	4
<b>Total</b>	<b>33 spaces</b>



The car parking spaces are to be identified on-site by line-marking and numbering upon the completion of the works and prior to issue of Occupation Certificate. Car parking spaces provided must only be used in conjunction with the approved uses contained within the development.

In the case of Strata subdivision any car parking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lots' unit entitlement.

Visitor parking facilities must be designated as common property on the strata plan. Visitor parking facilities must not at any time be allocated, sold, licensed or leased for the exclusive use of any occupier or owner and must be retained as common property by the Owners Corporation for use by building visitors.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

### **Visitors' Parking Sign**

G22. A sign, legible from the street, must be permanently displayed to indicate that visitor parking is available on the site and the visitor car parking spaces must be clearly marked as such.

(Reason: To ensure that visitors are aware that parking is available on site and to identify those spaces to visitors)

### **Use of Car Parking Spaces**

G23. Car parking spaces provided must only be used in conjunction with the approved uses contained within the development. Visitor parking facilities must be designated as common property on any strata plan. Visitor parking facilities must not at any time be allocated, sold, licensed or leased for the exclusive use of any owner or occupier or third party and must be retained as Common Property by the owners' corporation for use by building visitors.

(Reason: To ensure that visitor parking is not allocated to building occupants and remains available on an ongoing basis)

### **Compliance with Certain Conditions**

G24. Prior to the issue of any Occupation Certificate, **Condition C18** must be certified as having been implemented on site and complied with.

(Reason: To ensure the development is completed in accordance with the requirements of this consent)

### **Consolidation of Lots**

G25. Prior to issue of Occupation Certificate, the lots shall be consolidated into one title to be registered with the NSW Land Registry Services (LRS).

(Reason: Orderly development of the land)

### **Parking Design**

G26. The design, layout, signage, line marking, lighting and physical controls of all off-street parking facilities must comply with the minimum requirements of Australian Standard AS/NZS 2890.1 Off-street car parking, AS 2890.3 Bicycle parking and AS/NZS 2890.6 Off-street parking for people with disabilities. The details must be submitted to and approved by the Principal Certifying Authority prior to an Occupation Certificate being issued.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

### **Pedestrian Sight Distance at Vehicular Exit Driveway**

- G27. A pedestrian sight triangle of 2.0 metres by 2.5 metres is to be provided on both sides of the vehicular egress driveway in accordance with AS2890.1:2004. Any variation to this sight distance requirement would need to be assessed by an appropriately qualified traffic engineer and supplemented with additional traffic control devices such as convex mirrors at the egress to assist with sight lines, with the variation to not result in any detrimental impact in terms of pedestrian safety. Details demonstrating compliance with the requirements of this condition are to be submitted to the Certifying Authority prior to the issue of an Occupation Certificate.

(Reason: To ensure pedestrian safety at the site exit driveway)

#### **I. Ongoing/Operational Conditions**

##### **Noise and Vibration Impact**

11. The ongoing use of the premises approved under this consent must comply with all conditions pertaining to noise and vibration specified in this consent.

(Reason: To ensure compliance with the specified levels of noise and vibration and to maintain the amenity of surrounding land uses)

##### **Maintenance of Approved Landscaping**

12. The landscaping approved under **Condition A1** must be maintained in accordance with the approved landscape plan.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

(Reason: To ensure maintenance of the amenity, solar access and views of adjoining properties)

##### **Waste Collection**

13. Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

(Reason: To ensure the amenity of surrounding properties)

##### **Car Lift**

14. The car lifts must be covered by an on-going emergency repair contract by a suitably qualified lift maintenance company ensuring that, in the event of any malfunction, the car lifts can be returned to serviceability within a short timeframe.

The car lifts must be serviced by a suitably qualified lift maintenance company at 6 monthly intervals.

All residents to be provided with an operations and management plan for the car lifts, and provided with emergency breakdown contact numbers which are to also be displayed within the car lift cabins.