



Mr Ramy Tawadros  
Unit 406, 56 Bowman Street  
PYRMONT NSW 2009

D268/23  
DK4 (PE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
NOTICE OF DETERMINATION - Approval**

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<b>Development Application Number:</b>	<b>268/23</b>
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<b>Land to which this applies:</b>	46 Crows Nest Road, Waverton Lot No.: 69, DP: 17495
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<b>Applicant:</b>	Ramy Tawadros
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<b>Proposal:</b>	Amending DA relating to approved development DA 436/2021 to provide for a basement for parking purposes, internal reconfiguration, and amendments to the rear outdoor space area
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<b>Determination of Development Application:</b>	Subject to the provisions of Section 4.17 of <i>the Environmental Planning and Assessment Act 1979</i> , approval has been granted subject to conditions in the notice of determination.
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<b>Date of Determination:</b>	28 May 2024
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**Reasons for Approval**

The proposal was considered under the relevant Environmental Planning Instruments and policies including NSLEP 2013 and NSDCP 2013 and general found to be satisfactory.

The application proposes alterations and additions to an existing dwelling house, that are permissible forms of development in the R2 - Low Density Residential zone.

With regard to the potential impacts upon the amenity of adjoining properties and the unique context of the site, subject to conditions, the development application is considered to be satisfactory and is recommended for approval.

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Council received a total of four (4) submissions individual properties and the Eureka Precinct Committee that raised concerns and issues relating to bulk and scale, impacts associated with amenity, privacy and solar access, variations to provisions and controls under Council policy, uncharacteristic built form including front façade and roof, and impacts on streetscape and heritage conservation area. These concerns and issues have been discussed in this report and are addressed with appropriate conditions of consent.

Having regard to the merits of the proposal, the application is recommended for approval subject to appropriate standard and site specific conditions/refusal for the reasons provided below.

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**Consent to operate from:** 28 May 2024

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**Consent will lapse on:** 28 May 2029

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**Period of Consent**

Subject to Section 4.20 of the Act, this consent becomes effective and operates from the date listed above. The consent lapses five years after the date of consent in accordance with Section 4.53 of the Act and cannot be extended. To activate this consent, works must physically commence onsite 28 May 2029.

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**How community views were taken into account:**

The subject application was notified to adjoining properties and the Edward Precinct Committee for fourteen (14) days where a number of issues were raised that have been addressed in this report where appropriate conditions of consent have been recommended to maintain the amenity of adjoining properties and the character of the streetscape and Crows Nest Road Conservation Area.

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**Review of determination and right of appeal:**

Within six months after the date of notification of the decision, a review of this determination can be requested under Division 8.2 of the Act or an appeal to the Land and Environment Court made pursuant to the provisions of Section 8.7 of the Act. A review of determination should be lodged as soon as possible, and preferably no later two months after the date of notification of the decision to enable the review to be completed within the six-month period.

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Plans endorsed by the consent authority - please refer to condition A1.

**Endorsed for and on behalf of North Sydney Council**

**28 May 2024**

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DATE



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Signature on behalf of consent authority  
DAMON KENNY  
**EXECUTIVE PLANNER (ASSESSMENTS)**

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(i) **Conditions**

Consent is granted subject to the following conditions imposed pursuant to Section 4.17 of the Environmental Planning and Assessment Act 1979 (“the *Act*”) and the provisions of the Environmental Planning and Assessment Regulation 2021 (“the *Regulation*”) such conditions being reasonable and relevant to the development as assessed pursuant to Section 4.17 of the Act.

(ii) **Definitions**

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

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

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

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

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

**Council** means North Sydney Council.

**Court** means the Land and Environment Court.

**Local Native Plants** means species of native plant endemic to North Sydney LGA.

**Stormwater Drainage System** means all works, facilities and documentation relating to:

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

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

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

**Principal Certifier** for building or subdivision work means the certifier appointed as the principal certifier for the building work under section 6.6 (1) or for the subdivision work under section 6.12 (1).

**Principal Contractor** for building work means the person responsible for the overall coordination and control of the carrying out of the building work.

Note: If any residential building work is involved, the principal contractor must be the holder of a contractor licence under the *Home Building Act* 1989.

**Professional Engineer** has the same meaning as in the *NCC*.

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

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

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

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

**NSLEP 2013** means *North Sydney Local Environmental Plan 2013*

**NSDCP 2013** means *North Sydney Development Control Plan 2013*

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

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

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

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**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.

<b>Plan No.</b>	<b>Rev No.</b>	<b>Description</b>	<b>Prepared by</b>	<b>Dated</b>
A120	B	Plan - Demolition Ground Floor	Arquero	26/02/2024
A121	B	Plan - Demolition First Floor	Arquero	26/02/2024
A200	B	Plan - Proposed Site Plan	Arquero	26/02/2024
A220	B	Plan - Basement	Arquero	26/02/2024
A230	B	Plan - Ground Floor	Arquero	26/02/2024
A240	B	Plan - First Floor	Arquero	26/02/2024
A250	B	Roof Plan	Arquero	26/02/2024
A300	B	Elevations	Arquero	26/02/2024
A301	B	Elevations	Arquero	26/02/2024
A302	B	Elevations	Arquero	26/02/2024
A303	B	Elevations	Arquero	26/02/2024
A400	B	Sections - Overall	Arquero	26/02/2024
A450	B	Sections - Short	Arquero	26/02/2024
A800	B	Schedules	Arquero	26/02/2024
A901	B	Cut and Fill Diagram	Arquero	26/02/2024
21MB8795/D01	Issue A	Roof & First Floor Drainage Plans	United Consulting Engineers	17/08/23
21MB8795/D02	Issue A	Ground Floor Drainage Plan	United Consulting Engineers	17/08/23
21MB8795/D03	Issue A	Basement Drainage Plan	United Consulting Engineers	17/08/23
L01	Issue A	Landscape Plan	Hortus Design	15/08/23

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

**Modification to DA436/21**

A2. Prior to issuing a Construction Certificate in accordance with this consent, a notice of modification to development consent DA436/21 must be lodged with Council, to comply with the requirements of clause 67 of the Environmental Planning and Assessment Regulation 2021 which will ensure there is no inconsistency between the two consents.

A Condition to DA436/21 will need to be imposed and will read along the lines of:

*“Despite any other provision of this Development Consent DA436/21, this consent does not authorise or require anything that is inconsistent with the work approved in accordance with Development Consent DA268/23 and to the extent of any inconsistency the latter consent prevails.”*

A Construction Certificate for the proposed works can be issued once the consent authority has determined the modification

(Reason: To ensure consistency between development consents)

**Plans on Site**

- A3. 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 Certifier.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the Principal Certifier 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**

- A4. 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)

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

**Design Changes**

- C1. The following design changes must be incorporated into all documentation (including final plans/drawings) that are to be submitted as part of any application for a construction certificate:

- The maximum height of the front fence is to be 1m;
- Fixed obscure or frosted glass privacy screens, or fixed timber louvre/lightweight/lattice privacy screens shall be attached to the windows W09, W15, W16 and W20 to a minimum height of 1.6m above finished floor level;
- The solar panels are to be fixed at an angle of no greater than 5° and must not exceed a maximum height of 400mm above the roof.

(Reason: To ensure the amended and final design of the approved development as shown on the approved architectural plans are reflected on all construction certificate plans and documents and to ensure the contributory item and the conservation area is maintained the height of the proposed front fence has been reduced and a reduction in the height of the rear extension requires to sit below the existing eave of the dwelling)

**Dilapidation Report Damage to Public Infrastructure**

- C2. 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 Principal Certifier 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 Principal Certifier with submission of the Construction Certificate documentation.

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

**Dilapidation Survey Private Property (Neighbouring Buildings)**

C3. A photographic survey and dilapidation report of adjoining properties Nos. **44 and 48 Crows Nest Road, Waverton**, detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Principal Certifier, prior to the issue of any Construction Certificate.

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 photographic survey and dilapidation report 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 an applicant 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: Proper management of records)

**Dilapidation Report Private Property (Excavation)**

C4. A full dilapidation survey and report on the visible and structural condition of all neighbouring structures within the 'zone of influence' of the required excavations must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The zone of influence is to be defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

The dilapidation report and survey are to be prepared by a consulting structural/geotechnical engineer and a copy to be given to 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 owners to assist in any action required to resolve dispute(s) 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/ies prior to the commencement of construction)

### **Shoring for Adjoining Property**

C5. Where any shoring 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 Principal Certifier for approval prior to the issue of any 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 Principal Certifier 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)

### **Structural Adequacy of Adjoining Properties - Excavation Works**

C6. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining property Nos. **44 and 48 Crows Nest Road**, which certifies their ability to withstand the proposed excavation and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties during the course of the works, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

(Reason: To ensure the protection and structural integrity of adjoining properties in close proximity during excavation works)

### **Structural Adequacy of Existing Building**

C7. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the Principal Certifier for approval prior to issue of any Construction Certificate. The certified report must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the certified report must be complied with at all times.

(Reason: To ensure the structural integrity of the building is maintained)

**Construction and Traffic Management Plan (Major DAs and sites with difficult access)**

C8. Prior to issue of any Construction Certificate, a Construction and Traffic Management Plan must be prepared. The following matters must be specifically addressed in this Plan:

- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
  - i. Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways;
  - ii. Signage type and location to manage pedestrians in the vicinity;
  - iii. The locations of any proposed Work Zones in the frontage roadways;
  - iv. Locations and type of any hoardings proposed;
  - v. Area of site sheds and the like;
  - 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 Traffic Control Plan(s) for the site incorporating the following:
  - i. Traffic control measures proposed in the road reserve that are in accordance with the RMS publication "Traffic Control Worksite Manual" and designed by a person licensed to do so (minimum RMS 'red card' qualification).
  - ii. The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each.
  
- c) A detailed description and map of the proposed route for vehicles involved in spoil removal, material delivery and machine floatage must be provided detailing light traffic roads and those subject to a load or height limit must be avoided at all times.  
  
**A copy of this route is to be made available to all contractors and must be clearly depicted at a location within the site.**
  
- d) A Waste Management Plan in accordance with the provisions of Part B Section 19 of the North Sydney DCP 2013 must be provided. 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;
  
- (e) Evidence of RMS concurrence where construction access is provided directly or within 20m of an Arterial and/or Classified Road;
  
- (f) A schedule of site inductions to be held on regular occasions and as determined necessary to ensure all new employees are aware of the construction management obligations. These must specify that construction-related vehicles to comply with the approved requirements; and

- (g) For those construction personnel that drive to the site, the Site Manager shall attempt to provide on-site parking so that their personnel's vehicles do not impact on the current parking demand in the area.

A suitably qualified and experienced traffic engineer or consultant must prepare the Construction and Traffic Management Plan.

As this plan has a direct impact on the local road network, it must be submitted to and reviewed by Council prior to the issue of any Construction Certificate. A certificate of compliance with this condition from Council's Development Engineers as to the result of this review must be obtained and must be submitted as part of the supporting documentation lodged with the Principal Certifier for approval of the application for a Construction Certificate.

The construction management measures contained in the approved Construction and Traffic Management Plan must be implemented prior to the commencement of, and during, works on-site.

All works must be undertaken in accordance with the approved Construction and Traffic Management Plan.

**A copy of the approved Construction and Traffic Management Plan must be kept on the site at all times and be made available to any officer of the Council on request.**

Notes:

- 1) To apply for certification under this condition, an '*Application to satisfy development consent*' must be prepared and lodged with North Sydney Council. North Sydney Council's adopted fee for certification of compliance with this condition must be paid upon lodgement..
- 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 and Traffic Management Plan be lodged with Council as early as possible.
- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed in the condition 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 and construction process in a manner that respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community)

### **Geotechnical Report**

- C9. A report prepared by an appropriately qualified Geotechnical Engineer certifying that the existing rock formations and substrate on the site is capable of:
- a) withstanding the proposed loads to be imposed;
  - b) withstanding the extent of the proposed excavation, including any recommendations for shoring works that may be required to ensure the stability of the excavation;

- c) providing protection and support of adjoining properties; and
- d) the provision of appropriate subsoil drainage during and upon completion of construction works

must be submitted for approval by the Principal Certifier prior to the issue of any Construction Certificate.

Recommendations made in the certified report must be complied with at all times.

Building plans and specifications submitted for approval with any construction certificate application must comply with (a), (b), (c) and (d) above and the certified report, including any recommendations made in the said certified report.

The Principal Certifier 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 structural integrity of the subject site and adjoining sites during the excavation process)

### **Sediment Control**

C10. 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 Principal Certifier 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 Principal Certifier 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**

C11. A Waste Management Plan is to be submitted for approval by the Principal Certifier 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)

**Colours, Finishes and Materials (Conservation Areas)**

C12. The finishes, materials and exterior colours shall be complementary to the architectural style of the original building and sympathetic to the character of the Conservation Area. A schedule of finishes, materials and external colours shall be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition prior to the release of the Construction Certificate.

(Reason: To ensure that the completed colours, finishes and materials are complementary to the Conservation Area)

**Skylight(s)**

C13. Skylight flashing(s) and frame(s) to be coloured to match the roof material. Skylight(s) to sit no higher than 100 mm above roof plane when in a closed position. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

The Principal Certifier 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)

**External Finishes and Materials**

C14. The external colours and finishes must be in accordance with the approved schedule of finishes and materials. The Principal Certifier 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 development)



**Reflectivity Index of Glazing**

- C15. 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 Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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**

- C16. 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 Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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)

**Work Zone**

- C17. 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 Principal Certifier 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**

- C18. Except where otherwise approved by Council, the property boundary alignment levels 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 Principal Certifier for approval prior to the issue of any Construction Certificate.

The Principal Certifier 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)

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

- C19. A driveway crossing and roads infrastructure works permit to suit the approved off-street parking facilities must be granted by the Council prior to the issue of any Construction Certificate. In order to obtain a permit under S.138 of the Roads Act 1993, an application must be made to Council on the '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 issue of the permit. The requirements of the permit must be complied with at all times.

The civil design drawings must include the following at a minimum:

- a) the vehicular access way must comply with AS 2890.1 and Council's 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 the vehicular layback must be 3.5 metres (including the wings);
- c) the vehicular layback must be set square to the kerb;
- d) the crossing (between the layback and the property boundary) must be placed on a single straight grade of approximately 4.5%, falling to the back of the layback;
- e) the gutter levels and boundary footpath levels must match the existing levels and shall not be altered;
- f) transition works of 2 footpath panels on both sides of the driveway crossing are required to ensure uniformity in the footpath;
- g) the kerb gutter and road shoulder must be transitioned 1m on both sides of the crossing to ensure uniformity in the road reserve;
- h) the works will require reconstruction of the carriageway shoulder extending out 600mm from the gutter lip in AC10 - 50mm thick, adjacent to all new gutter works, layback, kerb/gutter,
- i) any twisting of driveway access must occur entirely within the subject property;
- j) all inspection openings, utility services must be adjusted to match the proposed driveway levels;

- k) sections along centre-line and extremities are required at a scale of 1:50 to be taken from the centre-line of the roadway through to the parking area itself and must include all changes of grade and levels both existing and proposed;
- l) a longitudinal section along the gutter line at a scale of 1:50 showing how it is intended to blend the vehicular crossing with the existing kerb and gutter;
- m) a longitudinal section along the footpath property boundary at a scale of 1:50 is required;
- n) the sections must show the calculated clearance to the underside of any overhead structure;

The permit must be granted by Council prior to the issue of any Construction Certificate.

All driveway and infrastructure works on the road reserve must be undertaken in accordance with the terms of the permit issued by Council. Inspections by Council will be required as specified. The Principal Certifier issuing the Construction Certificate must ensure that the permit issued by Council is obtained and referenced on and accompanies the Construction Certificate issued.

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

#### **Stormwater Disposal - Drainage Plan**

C20. Prior to the issue of any Construction Certificate, site drainage plans must be prepared by a licensed plumber or drainage engineer. The site drainage plans must be designed in accordance with the following criteria:

- a) compliance with NCC drainage requirements and current Australian Standards and guidelines;
- b) stormwater runoff and subsoil drainage generated by the approved development must be conveyed in a controlled manner to the existing easement. Note: It is the responsibility of the "person with the benefit of the Consent" to ensure the subject property benefits from the easement and the pipe has the capacity to accept the additional stormwater discharging from the property.
- c) new pipelines within council land shall be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres;
- d) 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; and
- e) prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception.

Drainage plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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: Proper disposal of stormwater)

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

C21. 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 practising civil engineer shall be provided to the Principal Certifier for approval prior to the issue of any 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**

C22. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of **\$5,000.00** 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 Principal Certifier 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)

#### **Foundations Adjacent to Drainage Easements**

C23. The foundations for building structures and walls adjacent to the drainage easement are to be constructed in such a manner that does not affect stormwater drainage lines. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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 allow maintenance without affecting the building and to ensure there is no damage to public assets)

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

C24. Prior to the issue of any construction certificate, security in the sum of **\$11,000.00** 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 six 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

<b>Tree bond fee</b>	<b>Amount (\$)</b>
<b>The total bond fee is</b>	<b><u>\$11,000.00</u></b>

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

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

C25. The tree protection measures contained in the arborist report prepared by Sam Allouche, dated 13 October 2021, and received by Council on 17 December 2021, shall be shown clearly on the Construction Certificate drawings.

In addition to the above measures, the following measures must be shown on the Construction Certificate drawings:

- All trees shown for retention must be protected in accordance with AS4970. Sensitive construction techniques including hand excavation, pier and beam construction and flexible location of piers must be undertaken within the TPZ of any protected tree.
- The street trees T1 *Jacaranda mimosifolia* (4m by 3m) and T2 *Tristaniopsis laurina* (13m by 10m) located in the council verge in front of the site must be protected in accordance with AS4970 and must have 1.8m high steel mesh tree protection fencing installed. This fencing is to be removed following completion of construction works and receipt of any occupation certificate.

Plans and specifications showing the said tree protection measures must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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**

C26. 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:

<b>Tree</b>	<b>Location</b>	<b>Height (m)</b>
T1 - street tree, <i>Jacaranda - Jacaranda mimosifolia</i>	Within road reserve, immediately adjacent to No. 46 Crows Nest Road	4m
T2 - street tree, Water Gum - <i>Tristaniopsis laurina</i>	Within road reserve, immediately adjacent to No. 46 Crows Nest Road	>6m
T9 - site tree, Bottlebrush - <i>Callistemon viminalis</i>	Rear yard, near western boundary.	>6m
T10 - site tree, California Palm - <i>Washingtonia filifera</i>	Rear yard, near western boundary.	<5m

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

Sensitive construction techniques including hand excavation, pier and beam, flexible location of piers/footings must be used within the TPZ of any protected tree. No roots greater than 40mm shall be cut.

All other existing site trees, including perimeter hedge plantings of *Cupressocyparis leylandii* must be retained and protected in accordance with AS4970.

Canopy pruning for any protected tree is not permitted.

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)

### **Approval for Removal of Trees**

C27. The following six (6) trees are approved for removal in accordance with the development consent:

<b>Tree</b>	<b>Location</b>	<b>Height (m)</b>
T3 - Waratah, <i>Alloxylon flammeum</i>	Front setback, near western boundary	< 5m
T5 - Bhutan cypress, <i>Cupressus torulosa</i>	Rear yard, near western boundary	15m
T6 - Bhutan cypress, <i>Cupressus torulosa</i>	Rear yard, near western boundary	15m
T7 - - Bhutan cypress, <i>Cupressus torulosa</i>	Rear yard, near western boundary	13m
T8 - Loquat, <i>Eriobotrya japonica</i>	Rear yard, near western boundary	< 5m
<i>Celtis</i> species	South-western corner of site	-

The removal of the above trees must be compensated by replacement tree planting within the subject site as indicated on the approved landscape plan and plant schedules.

Removal or pruning of any other tree on the site is not approved, excluding species exempt under Council's Tree Preservation Order.

Any trees 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)

### **Air Conditioners in Residential Premises**

C28. 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 8.00am and after 10.00pm on any Saturday, Sunday or Public Holiday; or
  - (ii) before 7.00am or after 10.00pm 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)

### **Swimming Pool Pumps on Residential Premises**

C29. The Principal Certifier must be satisfied that the swimming pool pump to be installed on the premises 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 8.00am and after 8.00pm on any Sunday or Public Holiday; or
  - (ii) before 7.00am or after 8.00pm on any other day
- (c) 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 shall 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.

Details demonstrating compliance with the requirements of this condition must be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

(Reason: To maintain residential amenity)

### **Swimming Pool Water to Sewer**

C30. The swimming pool, including overflow water, must be drained to the sewer. The consent of Sydney Water to dispose of wastewater must be obtained prior to the issue of any Construction Certificate. Plans and specifications complying with this condition and any conditions/requirements of Sydney Water must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully comply with this condition and any conditions/ requirements imposed by Sydney Water.

(Reason: Water from a swimming pool is classified as wastewater and cannot be legally disposed of into the stormwater system)



**Pool Filter**

- C31. The pool filtering equipment must be encased by a soundproof cover and must be located six (6) metres from any habitable room in a dwelling on a neighbouring property. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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 noise generated by equipment does not result in offensive noise)

**Section 7.12 Contributions**

- C32. A monetary contribution pursuant to the provisions of Section 7.12 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 **\$4,800.00**.

The contribution MUST BE paid prior issue of any Construction Certificate.

The above amount will be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the North Sydney Local Infrastructure Contributions 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 retain a level of service for the existing population and to provide the same level of service to the population resulting from new development)

**Security Deposit/Guarantee Schedule**

- C33. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

<b>Security deposit/ guarantee</b>	<b>Amount (\$)</b>
Street Tree Bond (on Council Property)	\$11,000.00
Infrastructure Damage Bond	5,000.00
<b>TOTAL BONDS</b>	<b>\$16,000.00</b>

Note: The following fees applicable

<b>Local Infrastructure Contributions</b>	<b>Amount (\$)</b>
Section 7.12 Contributions	\$480,00.00
<b>TOTAL CONTRIBUTION FEES</b>	<b>\$4,800.00</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.

(Reason: Compliance with the development consent)

#### **BASIX Certificate**

C34. Under clause 75 of the Environmental Planning and Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A502699 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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)

#### **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 Principal Certifier 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)

##### **Temporary Fences and Tree Protection**

D2. All protected trees on-site that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builders' waste are to be stored in the vicinity of the nominated tree/trees at any time.

Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), not less than the distance shown in the schedule hereunder, must be installed to the satisfaction of the Principal Certifier prior to demolition or commencement of any works and must be maintained for the duration of the works:

(Reason: To protect the trees to be retained on the site during construction works)

**Public Liability Insurance - Works on Public Land**

- D3. 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)

**Commencement of Works' Notice**

- D4. 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. 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)

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

E3. 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 Principal Certifier.

(Reason: Stormwater control during construction)

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

E4. 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 Principal Certifier and Council (if it is not the Principal Certifier) 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**

E5. 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 **approved geotechnical report prepared by a qualified geotechnical engineer**, 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**

E6. 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) Formwork for layback, kerb/gutter, footpath, etc.

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)

### **Removal of Extra Fabric**

E7. 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 Council to do so 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**

E8. 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**

- E9. 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)

**No Work on Public Open Space E13.**

- E10. 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**

- E11. 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**

- E12. 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**

- E13. 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 arborist report prepared by Sam Allouche, dated 13 October 2021, and received by Council on 17 December 2021 must be implemented for the duration of the works. In addition to the recommendations in the arborist report, the following measures must be implemented:

- All trees shown for retention must be protected in accordance with AS4970. Sensitive construction techniques including hand excavation, pier and beam construction and flexible location of piers must be undertaken within the TPZ of any protected tree.

- The street trees T1 *Jacaranda mimosifolia* (4m by 3m) and T2 *Tristaniopsis laurina* (13m by 10m) located in the council verge in front of the site must be protected in accordance with AS4970 and must have 1.8m high steel mesh tree protection fencing installed. This fencing is to be removed following completion of construction works and receipt of any occupation certificate.

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: 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. 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)

### Trees to be Removed

- E14. All trees on the site must be protected and retained save for those expressly identified below as being approved for removal:

Tree	Location	Height (m)
T3 - Waratah, <i>Alloxylon flammeum</i>	Front setback, near western boundary	<5m
T5 - Bhutan cypress, <i>Cupressus torulosa</i>	Rear yard, near western boundary	15m
T6 - Bhutan cypress, <i>Cupressus torulosa</i>	Rear yard, near western boundary	15m
T7 - Bhutan cypress, <i>Cupressus torulosa</i>	Rear yard, near western boundary	13m
T8 - Loquat, <i>Eriobotrya japonica</i>	Rear yard, near western boundary	<5m
<i>Celtis</i> species	South-western corner of site	-

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

### Special Permits

- E15. 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)

**Service Adjustments**

E16. The adjustment or inclusion of any new utility service or facilities must be carried out by an appropriate contractor in accordance with the requirements of the relevant utility authority.

These works shall be at no cost to Council. It is the Applicant's responsibility to contact the relevant utility authorities to ascertain the impacts of the proposal upon utility services prior to the commencement of any work, including demolition (including water, phone, gas and the like).

Council accepts no responsibility for any impact on or influence upon utility services provided by another authority.

(Reason: To ensure the service requirements are met)



### **Construction Hours**

- E17. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

<b>Location</b>	<b>Standard Construction Hours</b>	
	<b>Day</b>	<b>Hours</b>
<b>All Other Zones</b>	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)

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

- E18. 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**

- E19. 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)

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

- E20. 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**

- E21. 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)

**Imported Fill Material**

- E22. The only waste derived fill material that may be received at the development site is:
- a) Virgin excavated natural material (within the meaning of the Protection of the Environment Operations Act 1997); and
  - b) Any other waste-derived material the subject of a resource recovery exemption under cl. 51A of the Protection of the Environment Operations (Waste) Regulation 2005 that is permitted to be used as fill material.

Any waste-derived material the subject of a resource recovery exemption received at the development site, must be accompanied by documentation as the material's compliance with the exemption conditions and must be provided to the Principal Certifier on request.

(Reason: To ensure that imported fill is of an acceptable standard for environmental protection purposes)

**Waste Disposal**

- E23. 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**

- E24. 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)

**Noxious Plants**

E25. All lantana, privet, rubber trees, asthma weed, and other declared noxious plants on the site, must be eradicated before the commencement of landscape works.

(Reason: To ensure that plants identified as weed species are not allowed to proliferate or interfere with a quality landscaping outcome)

**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 Certifier 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 conditions is out of date, work must cease and no further work may be carried out unless the Principal Certifier for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

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 Certifier (PC)**

F3. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifier 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 Certifier appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

**Critical Stage Inspections**

F6. Building work must be inspected by the Principal Certifier on the critical stage occasions prescribed by the EP&A Act and its Regulations, and as directed by the appointed Principal Certifier.

(Reason: Statutory)

**Commencement of Works**

F7. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two (2) days' notice to North Sydney Council of the person's intention to commence the erection of the building.

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

**Excavation/Demolition**

F8. 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**

- F9. 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**

- F10. 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 Certifier 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 Principal Certifier 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 Principal Certifier) 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 Principal Certifier 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 Principal Certifier), upon completion of the development works and prior to the issue of an Occupation Certificate.

(Reason: Compliance with the Consent)

**Pool Access**

G3. Access to the pool must be restricted by a child resistant barrier in accordance with the regulations prescribed in the Swimming Pools Act 1992, and the requirements of the applicable Australian Standard. The pool must not be filled with water or be allowed to collect stormwater until the installation of the child resistant barrier is completed. Certification from an appropriately qualified person confirming compliance with these requirements must be provided prior to the issuing of any Occupation Certificate.

(Reason: To ensure that any person acting upon this consent is aware of their obligations under the provisions of the Swimming Pools Act)

**Pool Safety Requirements**

G4. A notice must be displayed in a prominent position in the immediate vicinity of the pool at all times showing:

a) Appropriate instructions of artificial resuscitation methods.

b) A warning stating:

- (i) "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL",  
and
- (ii) "POOL GATES MUST BE KEPT CLOSED AT ALL TIMES", and
- (iii) "KEEP ARTICLES, OBJECTS AND STRUCTURES AT LEAST 900 MILLIMETRES CLEAR OF  
THE POOL FENCE AT ALL TIMES",

Details demonstrating compliance are to be provided with any Occupation Certificate issued for the pool. This notice must be kept in a legible condition and at the poolside.

(Reason: To ensure an adequate level of safety for young pool users)

#### **Damage to Adjoining Properties**

- G5. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

(Reason: To ensure adjoining owner's property rights are protected)

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

- G6. 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 Principal Certifier 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 Principal Certifier 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 Principal Certifier.

(Reason: Compliance with the Consent)

#### **Damage to Adjoining Properties**

- G7. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

(Reason: To ensure adjoining owner's property rights are protected)

#### **Utility Services**

- G8. 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)**

- G9. 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 **46 Crows Nest Road, Waverton**, requiring the ongoing retention, maintenance and operation of the stormwater facility (rainwater harvesting tank),
  - 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;
    - the Construction plans, and
    - 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 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**

- G10. 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 Certifier 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)

**Unpaved Verge**

- G11. The unpaved verge area must be constructed or reconstructed and planted 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)



**BASIX Completion Certificate**

G12. In accordance with Section 45 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, prior to issuing a final occupation certificate the Principal Certifier must provide a BASIX completion receipt.

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

**Landscaping**

G13. The landscaping shown in the approved landscape plans, prepared by Hortus Design, Issue A, Plan No. L01, dated 15 August 2023, must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

**I. Ongoing/Operational Conditions**

**Pool Filter**

11. The swimming pool pump installed at the premises must not operate so as to:

(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);

- (j) before 8.00 am and after 8.00 pm on any Sunday or Public Holiday; or
- (ii) before 7.00 am or after 8.00 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 shall 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 ensure noise generated by equipment does not result in offensive noise)

**Maintenance of Approved Landscaping**

12. The owner of the premises at No. **46 Crows Nest Road, Waverton**, must maintain the landscaping approved by this consent generally in accordance with the approved landscaped plans.

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.

Should it be desired to substitute plants which are not of the same mature height, canopy density and nature (particularly flowering for non-flowering, native for exotic, deciduous for non-deciduous or the reverse of any these) a modification to this consent will be required.

(Reason: To ensure adequate landscaping treatments, as approved by this consent, are established within the site and maintained in perpetuity)