

A guide to resolving complaints about building works

A list of common concerns and who to call for assistance.

Building works are commonplace throughout the municipality. Sometimes these works can be a bit disruptive for neighbours but typically this is only a temporary and normal consequence of building activities.

Good communication between the builders and neighbours affected by building work can help minimise concerns and avoid disputes. Often issues can be easily resolved with a friendly chat.

This brochure provides guidance for residents whose concerns have not been satisfactorily addressed by the builder or the owner. It identifies the most common complaints arising from building works and who to call for assistance.

This guide should be read in conjunction with Council's brochure *Principal certifiers and Council* available on Council's website at www.woollahra.nsw.gov.au/building/certifiers

Most common complaints

The most common complaints that arise from work and activities on building sites include:

- building work not undertaken in accordance with the consent
- damage to adjoining properties
- noise or work undertaken outside permitted hours
- obstruction of roads or footpaths by construction vehicles, cranes, skip bins, etc
- concerns about construction fencing and hoardings
- damage to footpaths
- illegal parking
- pollution and environmental concerns such as runoff from the building site, site spills, dust or sediment
- unsafe work practices
- asbestos removal
- antisocial or inappropriate behaviour of workers on the building site
- building activities and/or workers trespassing or encroaching on adjoining land without permission.

These common complaints are discussed below in relation to work being carried out on building sites under a development consent or a complying development certificate, including information on the government agency you can go to for advice and assistance.

Building work not undertaken in accordance with the consent

If you are concerned that building work is not consistent with the development consent, you should contact the principal certifier (PC) for the site in the first instance.



The PC's contact details are provided on a sign at the front of the development site. If you are unsure who the PC is, or if you want to know if approval has been granted for the works, please contact Council's Customer Services on 9391 7000.

For more information on the role of PCs see Council's brochure *Principal certifiers and Council* available on Council's website at www.woollahra.nsw.gov.au/building/certifiers

Damage to adjoining properties

If you suspect that work on an adjoining site is causing damage to your building or property, you should notify the builder or owner of the land immediately.

If the matter can't be satisfactorily resolved, NSW Fair Trading may be able to help.

Fair Trading can access and investigate complaints about **residential building work** carried out by a licenced builder.

If the building work has been undertaken by an unlicenced builder, the matter becomes a civil issue; however, Fair Trading can advise about appropriate options for redress.

For more information about the dispute resolution and inspection service offered by NSW Fair Trading, or to lodge a complaint against a licenced builder, go to www.fairtrading.nsw.gov.au or call 13 32 20.

Adjudicating on alleged damage between property owners is not a matter for the PC or Council, as it is a civil matter between the property owners. However, the PC and Council do have a regulatory role to ensure compliance with development consent conditions.

Under the *Home Building Act 1989*, Fair Trading has significant powers to resolve building disputes and enforce compliance.

Fair Trading can:

- mediate and attempt to resolve disputes between the builder and the neighbour
- inspect a property to assess any damage caused by adjoining building works carried out by a licenced builder
- issue rectification orders to licenced builders to rectify defects, finish incomplete work or fix damage they have caused
- take disciplinary action such as issuing penalty notices, or suspending or cancelling a builder's licence.

Unsafe work practices

Everyone on a construction site has health and safety responsibilities when carrying out work and must comply with the *Work Health and Safety Act 2011* (WHS Act) and *Work Health and Safety Regulation 2017* (WHS Regulation). If you are concerned that the standards of work health and safety are not being met or risks are not being reasonably managed, please contact SafeWork NSW.

Asbestos removal

The removal, repair or disturbance of asbestos material must comply with the WHS Act, WHS Regulation and codes of practice. Anyone who removes, repairs or disturbs bonded or friable asbestos material from a building site must hold a current removal licence from SafeWork NSW have a site specific permit approving that project and use safe work procedures such as erecting signage, barriers and temporary fencing.

Please direct any concerns about unsafe disturbance or removal of materials that may contain asbestos from a building site to SafeWork NSW.

**To contact SafeWork NSW go to
www.safework.nsw.gov.au or call 131 050**

Noise, nuisance and other housekeeping issues

Council Rangers have the power to take action in relation to a range of nuisance and housekeeping issues such as:

- noise or work being undertaken outside permitted hours
- obstruction of roads or footpaths by construction vehicles, skip bins, etc
- concerns about construction fencing and hoardings
- damage to footpaths
- illegal parking.

Pollution and environmental issues

Council Rangers also have the power to monitor and take action in relation to pollution or runoff from the building site such site spills, dust or sediment.

Deciding which enforcement action to take

Council exercises discretion when deciding what enforcement action to take, if any.

Council's Enforcement Policy directs staff to consider the available evidence, nature and seriousness of the breach, the cost to the community of any action, circumstances of the individual case and public policy and precedent considerations.

The Enforcement Policy is available on Council's website at www.woollahra.nsw.gov.au

Tips for avoiding disputes

Tips for builders

Keep the neighbours happy! It's the little things that matter. For example, only work within permitted hours, keep the site clean and the footpath and road clear.

Communicate with the neighbours, especially about works or activities that may temporarily disturb their amenity. If damage occurs, give a written undertaking to fix it.

Tips for neighbours

Discuss your concerns with the property owner and/or builder. Sometimes people are unaware that their activities are causing nuisance and the matter may be able to be easily resolved.

If this is not an option or the concern has not been satisfactorily addressed, complaints should be referred to the applicable authority.

Trespassing on adjoining land

Sometimes building activities and workers require access to an adjoining property, for example to erect scaffolding or to access a sewer line or other utility service.

Usually the builder and neighbour can reach an agreement for access. Where agreement cannot be reached, the *Access to Neighbouring Land Act 2000* establishes a framework for a person to apply to the local court for a neighbouring land access order or a utility service access order.

The local court will consider, among other things, whether providing access would cause unreasonable hardship to the neighbour affected by the order. For more information on the Act please contact LawAccess NSW at www.lawaccess.nsw.gov.au or call 1300 888 529.

Where access has not been authorised and trespass occurs, please contact NSW Police.

Police matters

Concerns about trespassing or antisocial, threatening, intimidating, offensive or inappropriate behaviour on a building site should be directed to NSW Police.

Woollahra Municipality is covered by the Eastern Suburbs Police Area Command, which can be contacted on 9369 9899. Non-emergencies can also be reported on 131 444. All emergencies should be reported on 000.

Community Justice Centres

Community Justice Centres (CJC) provides a free and confidential mediation service to help neighbours resolve disputes.

For more information on the services provided by CJC go to www.cjc.justice.nsw.gov.au or call 1800 990 777.

To report concerns to Council about a building site, please call 9391 7000.



Woollahra
Municipal
Council

536 New South Head Road,
Double Bay, NSW 2028
02 9391 7000
woollahra.nsw.gov.au