

4.5. 6 John Street, McMahons Point

AUTHOR: Long Huynh, Team Leader Building Compliance

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS:

1. Attachments [4.5.1 - 38 pages]
1. Development Control Order dated 30 March 2020
2. Development Control Order dated 1 February 2022
3. Deed of Settlement
4. Fire Safety Upgrade Order dated 27 July 2021

PURPOSE:

The purpose of this report is to provide information in response to Council's resolution from its meeting held on 24 January 2002.

EXECUTIVE SUMMARY:

The property known as 6 John Street, McMahons Point operates as a boat maintenance facility. Since the lodgment and consideration of the Floating Dry Dock development (DA 57/19) application in 2019 there has been an escalation of concerns raised by the surrounding residents regarding the operation of the site under Development Consent No 1164/90.

Council, at its meeting on 24 January 2022, resolved the following:

1. *THAT Council be provided with an urgent report on the status of compliance issues, investigations and actions to enforce the conditions of consent of DA 1164/90 for redevelopment of the existing boat maintenance facility at 6 John Street, McMahons Point and compliance with the terms of the S34 agreement and subsequent Court Orders made by the Court in respect of Land and Environment Court Proceedings No. 2020/00122833, including, but not limited to, the enforcement of:*
 - (a) *the public benefit condition D51 which required the developer to "provide a public jetty extending from land below John Street, approximately in the location of the former sea baths, subject to the design and position being acceptable to Council";*
 - (b) *the numbers of boats to be permitted on the site at any time;*
 - (c) *the unauthorised caretaker's cottage and other unauthorised structures; and*
 - (d) *environmental and operational conditions including noise standards and industrial equipment.*

2. *THAT Council be provided with an urgent report on the status of compliance issues, investigations and actions relating to fire safety at 6 John Street, McMahons Point including issues relating to access to and egress from the site for fire trucks and emergency and the storage and use of flammable chemicals and materials.*

The purpose of this report is to provide information in response to the above Council resolution.

FINANCIAL IMPLICATIONS:

Expenditure in relation to legal advice and defending Council's Order 11, dated 30 March 2020 is \$115,034.96. Resulting from the Order 11 appeal, a further \$15,316 was spent on legal representations in relation to the Deed of Settlement. Therefore, the total amount spent for the period between 27 February 2019 and 24 December 2021 is \$130,350.96. The matter and costs are ongoing. Significant internal resources have also been applied to the matter in addition to the payments for external legal advice.

RECOMMENDATION:

1. **THAT** the 6 John Street, McMahons Point report be received.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

3. Our Future Planning

3.5 North Sydney is regulatory compliant

BACKGROUND

On 2 May 1990, 6 John Street, McMahons Point (the “**Property**”) submitted an application 1164/90 to Council seeking to rebuild an existing boat maintenance facility. The proposal sought to demolish existing buildings and obsolete water front structures. In their place would be erected 9 workshops, 2 work sheds and a flammable goods store. Other onsite facilities included a hard-stand area for a wash bay and onsite car-parking of 40 vehicles.

The Property is situated within Berry’s Bay, surrounded by John Street, Munro Street and Dumbarton Street.

The 1990 application was advertised twice and attracted a large number of public submissions.

According to a memorandum, dated 22 March 1994, from Council’s Manager of Assessments to the Mayor at the time, the development works were to be completed in three (3) stages. As of the date of the memorandum, stage 1 had been completed. Stage 1 comprised of buildings known as Worksheds as presently seen onsite.

There has been no observations of any further physical works to the Development Consent D1164/90 since 1994.

CONSULTATION REQUIREMENTS

Community engagement is not required.

DETAIL

Regulatory Action

Development Control Order

On 30 March 2020, Council issued a Development Control Order (attached) requiring Noakes Group Pty Ltd to comply with the conditions of their Development Consent 1164/90, particularly the sand blasting, maximum number of boats and the removal of a storage shed

(Caretaker's Unit). This Development Control Order was appealed within the Land & Environment Court, case number 2020/00122833, resulting in the Deed of Settlement.

On 1 February 2022, a Development Control Order was issued to Noakes Group to require them to:

1. Demolish the unauthorised mobile shed structure; and
2. Demolish the unauthorised Caretaker's Unit;
3. Comply with condition D51 of Development Consent 1164/90 by constructing a public jetty from the land below John Street.

It should be noted that the recipient of the Order has a period of 28 days to appeal the Development Control Order.

Condition D51 – Construction of the Public Jetty

One of the main points of the contention during the assessment of the application number 1164/90 was the foreshore access. As such, conditions condition D51 was imposed which states:

*"The developer shall at no cost to the Council provide a public jetty extending from land below John Street, approximately in the location of the former sea baths, subject to the design and position being acceptable to Council. This jetty shall be completed and available for use **prior to substantial completion of the approved building works.**"*

The issued Development Control Order, dated 1 February 2022, includes requiring the construction of the Public Jetty in accordance with Condition D51 of Development Consent No 1164/90.

Deed of Settlement

As a result of legal proceedings (2020/00122833), North Sydney Council and Noakes Group Pty Ltd entered into a Deed of Settlement (DoS) on 23 December 2020.

The DoS (attached) in effect sets the operational standards from 23 December 2020 in accordance with its clause 2.2. Below is a table identifying the terms of agreement and commentary regarding compliance status to date:

Requirement of clause 2.2 of DoS	Compliance Investigation Status
The applicant (Noakes) agrees to lodge by 24 December 2020 an application for a Building Information Certificate (BIC) to the Respondent (Council), in relation to the Caretakers Unit.	The BIC application No C30/60 was submitted to Council on 24 December 2020 and was refused on 13 January 2022.

Requirement of clause 2.2 of DoS	Compliance Investigation Status
	A Development Control Order, dated 1 February 2022 has been issued requiring the Caretakers Unit to be demolished.
The applicant agrees to lodge by 24 December 2020 the Development Application to the Respondent, for the use of the Caretakers Unit.	<p>The Development Application No 13/21 was submitted on 7 January 2021 and was withdrawn on 29 June 2021. As such, the use of the Caretaker's Unit has not been regularised.</p> <p>A Development Control Order, dated 1 February 2022 has been issued requiring the Caretakers Unit to be demolished.</p>
To not use the Caretaker's Unit until and unless both a BIC has issued for the Caretakers Unit structure and a Development Consent for the use of the Caretakers Unit has been granted.	A Development Control Order, dated 1 February 2022 has been issued requiring the Caretakers Unit to be demolished.
To lodge by 24 December 2020, and application for a Building Information Certificate (BIC) to the respondent, in relation to the Mobile Structure.	<p>The BIC application No C29/30 was submitted on 24 December 2020 and refused on 9 June 2021.</p> <p>A Development Control Order, dated 1 February 2022 has been issued requiring the Mobile Structure to be demolished.</p>
To lodge by 24 December 2020, a Development Application to the respondent for the use of the Mobile Structure.	<p>The Development Application No 11/21 was submitted on 8 January 2021 and refused on 2 June 2021.</p> <p>A new Development Application No 456/21 was received by Council on 24 December 2021 and is currently under assessment.</p> <p>Any legal actions to enforce this Order will be subject to the determination of DA 456/21.</p>

Requirement of clause 2.2 of DoS	Compliance Investigation Status
Subject to clause 2j, to not use the Mobile Structure until and unless both a building information certificate (BIC) has been issued for the mobile structure and a development consent for the use of the mobile structure has been granted.	<p>A Development Control Order, dated 1 February 2022 has been issued requiring the Mobile Structure to be demolished.</p> <p>Any legal actions to enforce this Order will be subject to the determination of DA 456/21.</p>
To lodge by 1 February 2021, a development application seeking consent for the use of the site, consistent with the permitted by the EPL and any amendment to condition D50 of development consent 1164/90.	<p>According to Council's record, this requirement has not been satisfied.</p> <p>Staff are liaising with Council's solicitors to investigate options of enforcement.</p> <p>Please also refer to the discussion, EPA matters, for further details of actions regarding the EPL.</p>
To not keep or permit to be kept more than a maximum of 30 boats in total on the site during the interim period.	<p>To date, staff have not been able to ascertain categorical evidence of a breach which would allow formal regulatory actions to be taken.</p> <p>Staff continues to commence investigations upon receipt of complaints.</p> <p>See discussion section, Number and size of boats for further detail.</p>
That during the interim period it will ensure that no more than 4 non-commercial boats will be kept on site.	As above.
That during the interim period it will keep the non-commercial boats in the locations identified on the plan at Annexure E to this deed.	As above.
That during the interim any spray painting or blasting activities must only occur in the worksheds with the exception of minor repair works which may be carried out on the site shown outlined on a map in Annexure F.	To date, staff have not been able to ascertain categorical evidence of a breach which would allow formal regulatory actions to be taken.

Requirement of clause 2.2 of DoS	Compliance Investigation Status
	<p>Staff continues to commence investigations upon receipt of complaints.</p> <p>See discussion section, EPA matters.</p>
<p>That during the Interim Period it will ensure that the operations at the Site do not generate noise levels when measured at the boundary of any neighbouring residential developments, which exceed:</p> <ol style="list-style-type: none"> 1. At John Street L10 = 57 dBA 2. At Dumbarton Street L10 = 45 dBA 3. At Munro Street L10 = 49 dBA 	<p>The most recent Noise Impact Assessment, as required by the EPA to be undertaken at the site, is under review to determine if there is evidence of a breach under the Environmental Planning and Assessment Act which will allow formal regulatory actions to be commenced.</p> <p>See discussion section, EPA matters.</p>
<p>To not carry out Spray Painting or Blasting activities in the Northern Slipway during the Interim Period.</p>	<p>To date, staff have not been able to ascertain categorical evidence of a breach which would allow formal regulatory actions to be commenced.</p> <p>Investigations continues to be undertaken upon receipt of complaints.</p> <p>See discussion section, EPA matters.</p>
<p>That during the Interim Period, to not cause or permit the application of anti foulant to boats outside of a work shed other than by roller, brush or airless spray technique and only when encapsulated/screened using shade cloth, plastic or the like.</p>	<p>To date, staff have not been able to ascertain categorical evidence of a breach which would allow formal regulatory actions to be commenced.</p> <p>Investigations continues to be undertaken upon receipt of complaints.</p> <p>See discussion section, EPA matters.</p>
<p>To comply with Development Consent DA 1164/90, the Part 5 Approval and the terms of the EPL except where provided to the contrary for the matters set out in this deed.</p>	<p>Whilst this forms part of the Development Approval, Council are limited in their regulatory authority where EPL conditions apply. As such, liaisons with the EPA will</p>

Requirement of clause 2.2 of DoS	Compliance Investigation Status
	<p>continue, to commence investigations upon receipt of complaints.</p> <p>See discussion section, EPA matters.</p>

Ongoing Compliance Matters

Environmental Protection Authority (EPA)

The operation at 6 John Street requires an Environment Protection Licence (EPL) provided by the NSW Environment Protection Authority (EPA). Being EPL licensed, the EPA has jurisdiction over the site with regard to Protection of the Environment legislation (POEO Act).

Therefore, the EPA is the regulatory authority responding to community complaints about noise and odour, which includes the monitoring of activities and taking enforcement actions to require Noakes to improve, if required, environmental outcomes for the community. Council has been liaising with the EPA regarding their actions in relation to noise and odour at Noakes.

Following are the actions taken by the EPA thus far in relation to Noise and Odour at the site:-

Noise

- A Notice of Variation of License No. 10893 was issued by the EPA on 17 December 2020 which set out requirements for Noakes to undertake a Pollution Study and Reduction Program in relation to matters of noise impact, requiring the provision of a Noise Impact Assessment and Noise Management Plan.
- A second Notice of Variation of Licence No. 10893 was issued by the NSW EPA on 18 February 2021 which confirmed further dates for the noise impact assessment to be completed and, subsequent upon the provision of that assessment, a Noise Management Plan to be lodged with the NSW EPA.
- The Noise Impact Assessment and Noise Management Plan were lodged by Noakes on 23 April 2021. A Licence Variation was issued on 18 June 2021. It provides for implementation of the agreed Noise Mitigation Measures, to be carried out by 30 June 2022.
- These noise mitigation measures include staged upgrades to cladding, sealing roof vents, door seals, travel lift engine casing, ventilation ductwork and the use of a mobile acoustic tent or screening to mitigate any noisy works conducted in the direction of people's houses.
- The EPA has also required Noakes to conduct a study to evaluate the effectiveness of the new controls once implemented.

In addition to the above, Council staff are reviewing the submitted Noise Impact Assessment and will be liaising with the EPA to determine if there is evidence of a breach enabling staff to take regulatory actions under the provisions of the Environmental Planning and Assessment Act 1979 (EPA Act).

Odour

- A variation was issued by the NSW EPA requiring an Air Quality Risk Assessment to be provided to the NSW EPA to enable the EPA to better understand the risk of air quality impacts from Noakes' operations and whether existing pollution controls are sufficient.
- The air quality risk assessment dated November 2021 submitted to the EPA provides for the relocation of current exhausts and the implementation of an upgraded carbon filtration system. However, the installation of the carbon filtration system would require a Development Consent from Council.
- The submitted Development Application No D456/21, which seeks to regularize the use of the mobile shed structure, includes the installation of the proposed carbon filtration. This application is presently being considered by Council.

Number and size of boats

Several photographs have been submitted to Council, illustrating that the number of boats stored upon the site may at certain times exceed the maximum limit identified by clauses 2h and 2i of the DoS. To enable regulatory action, supporting evidence is required that all boats in the photographs are associated with Noakes operations.

The Noakes logbook of boats on site, provided to Council during its investigation in October 2021, demonstrated compliance with the agreement. Furthermore, advice provided to Council was that not all boats at the dock are associated with Noakes operations and some boats may not be there for maintenance.

Based on the available information, staff have not been able to ascertain categorical evidence of a breach which would allow formal regulatory actions to be commenced.

Council recently requested Noakes to submit a copy of its logbook for the period from November 2021 to end of January 2022 to review whether a breach of the DoS has occurred during the subject period.

Fire Safety Matters

Annual Fire Safety (AFSS)

An Annual Fire Safety Statement indicates that an accredited practitioner (fire safety) has assessed, inspected and verified the performance of each fire safety measure that applies to a building.

6 John Street, McMahons Point submitted an Annual Fire Safety Statement to Council in November 2021. The submission of the AFSS satisfies the requirement of clause 89 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

Fire Safety Upgrade Order

The premises may have complied with fire safety requirements at the time of construction. However, it has been identified that previous standard of construction may no longer be suitable and would require upgrade works to be undertaken to ensure that the premises' fire services meet current standards.

On 27 July 2021, Council issued a Fire Safety Upgrade Order to 6 John Street, McMahons Point based upon a BCA Fire Safety Report prepared by Zac Wilkins and Andrew Brohier of McKenzie Group. The Fire Safety Order forms part of Council's fire safety upgrade program to bring older buildings to current standards (or the standards as adopted at the date of the Order).

The Order permits a period of 2 years to complete the upgrade works. The process in determining the required upgrades and timeframes followed Council's standard process for these type of fire safety concerns.

Until the 2 years period expires, Noakes Group is required to submit Annual Fire Safety Statements to certify that all installed existing measures are maintained and working to the standards that were applicable at the time of initial installation.

It should be noted that Council provided a copy of its Fire Safety Upgrade Order, and the Fire Safety Audit report, to Fire and Rescue NSW. To date Council has not received an objections or a request from Fire and Rescue NSW to modify the terms or period for compliance as set out in the Order.

Access and Egress from Site for Fire Trucks

It has been reported to Council that the size of boats stored at the property may impede upon Fire Trucks accessing the property, causing fire safety concerns.

The provisions of the Building Code of Australia (BCA) do not make reference or set a requirement for private properties to accommodate Fire Trucks. The BCA requires the building to maintain a 1m wide path of travel to ensure persons are able to reach an exit from within the building and into an open space or public road. In the case of 6 John Street, site inspections revealed a 1m wide path of travel, at the time of the inspection, to an exit from within the building/s.

As such, regulatory actions cannot be instigated under the EPA Act should a boat overhang onto a driveway within a private property, provided a 1m wide path of travel to the public road is maintained.

Storage and use of flammable chemicals and material

The BCA does not regulate materials (or chemicals) stored upon the site, provided the materials or chemicals stored are consistent with the approved use and would not alter the BCA classification of buildings.

In the case of 6 John Street, McMahons Point, the materials stored on site (as observed during the inspection) appear to be consistent with Development Consent 1164/90, being a boat maintenance facility.

The ongoing safe storage and use of chemicals on site may be governed by Safework NSW.

Ombudsman Complaint Investigation

On 27 October 2021 the NSW Ombudsman Office reviewed Council's actions in handling various issues raised in relation to alleged non-compliances from Noakes Group. This review was instigated by the community who were generally unsatisfied with the resolutions or lack thereof of their concerns.

Upon receiving Council's written response regarding its documented and comprehensive investigations, the NSW Ombudsman Office advised Council that the case have been closed with no further actions.

CONCLUSION

The compliance issues raised regarding 6 John Street to date are complex and resource intensive.

The complexity of the issues at the site are compounded by limitations of what can be regulated in terms of the Environmental Planning and Assessment Act 1979 and the provisions of the Protection of the Environment Operations Act 1997 as regulated by the EPA through the EPL.

The various departments of Council and external parties, that includes the EPA, continue to liaise on the matter in investigating the concerns raised.

Original signed by Marise Van Der Walt on 30/3/2020

Noakes Group Pty Ltd
6 John Street
MCMAHONS POINT NSW 2059

LKH (CIS)

Dear Sir/Madam,

RE: DEVELOPMENT CONTROL ORDER - GENERAL ORDER
PREMISES: 6 JOHN STREET, MCMAHONS POINT

I refer to the representation from Mr Peter Inchbold, received via email on 3 March 2020, in response to Council's Notice of Intention to Issue a Development Control Order, dated 18 February 2020.

Please be advised that Council has reviewed your representation and has determined that it contained insufficient justification to address Council's "Reasons" for the issuance of the Order.

As such, Council has determined to issue the Order **as attached**.

I note that Mr Long Huynh spoke to Mr Peter Inchbold on the telephone on 27 March 2020 regarding the spray painting activity occurring on that date. Mr Inchbold indicated that the spray painting was done near the Northern Slipway and "legally" in accordance with the consent.

I wish to take this opportunity to draw your attention to Condition D34B(i) which **only allows spray painting to either occur within the worksheds or within the Northern Slipway**.

I realise in your representation you indicated "*the company is very conscious of the fact that pollutants can more easily escape the catchment arrangements that are erected around the slipways*". In this regard, Council suggest that you consult relevant professionals and the EPA to explore more efficient methods to stop pollutants from escaping so as to comply with your Development Consent.

Furthermore, within your representation you requested copies of photographic evidence to be provided to you. In this regard, Council's Building Compliance Team is unable to release such information. However, you may wish to undertake a GIPA application. For your information, appropriate applications may be obtained at the below weblink:

https://www.northsydney.nsw.gov.au/Council_Meetings/Forms/Online_Forms?BestBetMatch=GIPA|863552b6-4be4-4f53-b581-248e125e80fa|b0f2021b-05f6-4b41-aed2-a0a60125844d|en-AU

I trust you will attend to this matter accordingly.

Should you have any further enquiries in this regard, please contact Council's Team Leader Building Compliance, Mr Long Huynh, on telephone number 9936 8100 during normal business hours, or via Council's email address council@northsydney.nsw.gov.au.

Yours faithfully,

MARISE VAN DER WALT
MANAGER ENVIRONMENTAL HEALTH & BUILDING COMPLIANCE

Date:

Noakes Group Pty Ltd
6 John Street
MCMAHONS POINT NSW 2059

LKH (CIS)

Dear Sir/Madam

**A DEVELOPMENT CONTROL ORDER
- GENERAL ORDER
PART 9, DIVISION 9.3, SECTION 9.34 OF THE ENVIRONMENTAL PLANNING
AND ASSESSMENT ACT, 1979
SCHEDULE 5, PART 1 ITEM 11**

PREMISES: 6 JOHN STREET, MCMAHONS POINT

NORTH SYDNEY COUNCIL, in the exercise of its functions under Part 9, Division 9.3, Section 9.34, Schedule 5, Part 1, Item 11 of the *Environmental Planning and Assessment Act, 1979*, hereby orders you, as the operator of the Business known as Noakes Boatyard in respect of the above address as follows:-

Terms of Order 11

1. Prevent any sandblasting or spray painting of vessel hulls upon the 6 John Street, McMahons point except within the work sheds provided for the purpose or within the Northern slipway in accordance with Condition D34B (i) of Development Consent 1164/90. Condition D34 B (i) states:

“There shall be no sand-blasting or spray-painting of vessel hulls other than in the work sheds provided for the purpose, save where the vessel to be sandblasted or spray-painted will not fit in those sheds or is incapable of being lifted into those sheds by the travel lift. Such vessels shall be spray-painted or sand-blasted on the north slipway and only once adequate screening as set out in a letter from Richard Dinham to the Council dated 15 October 1990 is provided”

2. Restrict the number of boats stored upon 6 John Street, McMahons Point to a maximum of 26 as required by condition D50 of Development Consent 1164/90. Condition D50 states:

“The maximum number of boat places shall not exceed 26. For the purposes of this condition “boat places” means a place capable of containing any boat in excess of 3 metres in length....”

3. Remove the storage structure located near the John Street entrance, and adjacent to the Northern Slipway, of 6 John Street, McMahons Point and revert to parking spaces as identified within Drawing 9041/101 as adopted by Development Consent 1164/90. See copy of plan attached.

Reason for Order 11

1. Council has received time stamped photographic and video footages from members of the community indicating the following:
 - a. Spray painting occurring on 24 August 2019 to a boat vessel that is not located within the work sheds nor the Northern Slipway of the 6 John Street, McMahons Point.
 - b. Photographs with notated date of 9 December 2019 illustrating the number of boats stored/docked/moored at 6 John Street, McMahons Point exceeded 26 as permitted by condition D50 of Development Consent 1164/90.
2. During an inspection of 6 John Street, McMahons Point on 13 February 2019, by Mr Long Huynh and Ms Adele Buccharra, it was noted that a storage structure was built in a location where car spaces were marked within stamped approved plan numbered 9041/10, as adopted by Development Consent 1164/90. Mr Langman indicated during the inspection that it was a “care takers unit”.

A search of Council’s record did not reveal any approval for the construction of nor the use of a care takers unit at 6 John Street, McMahons Point.

Based upon the above Council is concerned that the operation of the Noakes is not in accordance with the Development Consent 1164/90 and as a result, is likely to negatively impact upon the surrounding community.

Terms of the Order must be complied with within thirty (30) days of the endorsed date of the Order.

You are advised that you may appeal to the Land and Environment Court against this Order or a specified part of the Order under the provisions Part 9, Division 9.3, Schedule 5, Part 4 of the Act. Such appeal must be made within twenty-eight (28) days after the service of this Order.

Failure to comply with the requirements of this Order is an offence pursuant to Part 9, Division 9, Section 9.37 of the *Environmental Planning and Assessment Act, 1979*. The maximum penalty for such an offence is \$5 million with a further daily maximum penalty not exceeding \$50,000.

Should you have any further enquiries in this regard, please contact Council’s Team Leader Building Compliance, Mr Long Huynh, on telephone number 9936 8100 during normal business hours, or via Council’s email address council@northsydney.nsw.gov.au.

Yours faithfully,

**MARISE VAN DER WALT
MANAGER ENVIRONMENTAL HEALTH & BUILDING COMPLIANCE**

Endorsed date:

Original signed by Long Huynh

on 27/07/2021

Stannard Marine Pty Ltd
Unit 6, 448 Pacific Highway
LANE COVE NORTH NSW 2066

SH3 (CIS)

Dear Sir/Madam

**DEVELOPMENT CONTROL ORDER - FIRE SAFETY ORDER,
PART 9, DIVISION 9.3, SECTION 9.34 OF THE ENVIRONMENTAL PLANNING
AND ASSESSMENT ACT, 1979 SCHEDULE 5, PART 2 ITEM 1**

PREMISES: 6 JOHN STREET, MCMAHONS POINT

I refer to the Notice of Intention to Issue a Development Control Order - Fire Safety Order issued under Part 9, Division 9.3, Section 9.34 Schedule 5, Part 2, Item 1 of the *Environmental Planning and Assessment Act, 1979*, dated 8 July 2021 (**the Notice**).

No representations to the proposed Order have been received by Council. Accordingly, please find attached a Development Control Order - Fire Safety Order under Schedule 5 of the *Environmental Planning and Assessment Act 1979*. The Order remains unaltered to the Notice of Intention dated 8 July 2021.

I trust you will attend to this matter promptly. All owners and other interested persons must be advised of this Order.

Should you have any further enquiries in this regard, please contact Council's Senior Building Surveyor, Mr. Simon Hitchcock, between 9.30 am and 11.00 am (Monday to Friday) on telephone number 9936 8100 or at any time via Council's email address council@northsydney.nsw.gov.au.

Yours faithfully



Long Huynh
TEAM LEADER BUILDING COMPLIANCE

Date Endorsed: 27 July 2021

c.c. Fire and Rescue NSW, Locked Bag 12, Greenacre NSW 2190
Hamptons Property Services C/- Kristy Hodgkinson - kristyh@hamptonsproperty.com.au

Stannard Marine Pty Ltd
Unit 6, 448 Pacific Highway
LANE COVE NORTH NSW 2066

SH3(CIS)

Dear Sir/Madam

**DEVELOPMENT CONTROL ORDER - FIRE SAFETY ORDER
PART 9, DIVISION 9.3, SECTION 9.34 OF THE *ENVIRONMENTAL PLANNING AND
ASSESSMENT ACT, 1979*
SCHEDULE 5, PART 2, ITEM 1**

PREMISES: 6 JOHN STREET, MCMAHONS POINT

NORTH SYDNEY COUNCIL, in the exercise of its functions under Part 9, Division 9.3, Section 9.34, Schedule 5, Part 2, Item 1 of the *Environmental Planning and Assessment Act, 1979*, hereby orders you, Stannard Marine Pty Ltd, as the owner in respect of the above address as follows:

Terms of the Order

1. Carry out the recommendations detailed in Building Code of Australia (BCA) Fire Safety Audit and Upgrade Report dated 5 July 2021 prepared by Zac Wilkins and Andrew Brohier of McKenzie Group, identified on pages 5-16 (attached).
 - a. It is recommended that test reports are to be provided to confirm compliance of the Fire Hazard Properties for the linings. Any non-compliances are required to be rectified.
 - b. External walls of the buildings to comply with Table 5 of Spec C1.1 if less than 3m to a boundary.

A structural engineer is to be engaged to confirm the external walls of each building comply with the FRL requirements outlined in table 5.

If the external walls are required to achieve an FRL, all openings must be appropriately protected.
 - c. A clear 1m path of travel is to be provided to all exits in each building.
 - d. It is noted that the main entrance/exit stairs to the office building have been constructed on combustible material (wood).

It is recommended these stairs be upgraded to comply with D1.8

- e. It is recommended that a clear 1m path of travel is provided from the discharge of exits to a road or open space. Bollards are recommended to be installed where required to keep exit clear.

- f. It is recommended that a new housing be provided to the external distribution board.
- g. It is recommended that all stairs serving as required exits be upgraded to comply with clause D2.13.
- h. It is recommended that all stairs serving as required exits be upgraded to comply with clause D2.14.
- i. It is recommended that exit doors in the workshops be upgraded to not incorporate a step or ramp any point closer to the doorway than the width of the door leaf.
- j. It is recommended that the barrier to the mezzanine level in the workshop be upgraded to comply with D2.16.
- k. It is recommended that all handrails serving as a required exit to be upgraded to comply with D2.17 and AS1428.1-2009.
- l. It is recommended that all doors serving as a required exit or forming part of a required exit swing in the direct of egress.
- m. It is recommended that all doors serving as exits or forming part of exits be upgraded to comply with operation of latch requirements.
- n. It is recommended that all exit doors be provided with compliant signage.
- o. It is recommended that all buildings that do not have a clause D3.4 exemption be provided with compliant accessways to the principal pedestrian entrance.
- p. Recommended that all stairs and ramps, except ramps and stairways exempt by D3.4 be upgraded to comply with AS1428.1-2008.
- q. It is recommended that accessible parking spaces be provided on site at a rate of 1 space for every 100 carparking spaces.
- r. Recommended that signage complying with clause D3.6 be installed to all accessible parts of buildings.
- s. Recommended that tactile ground surface indicators be installed to all accessible stairways and ramps.
- t. Recommended that all glazing in an accessway be clearly marked in accordance with AS1428.1.
- u. It is recommended that a fire hydrant system be installed to comply BCA 2019 Amdt 1 Clause E1.3 and AS 2419.1 - 2005 Amdt 1 or be addressed in a performance solution or a combination of both.
- v. It is recommended that the fire hose reel system be upgraded to comply with BCA 2019 Amdt 1 Clause E1.4 and AS 2441 - 2005 Amdt 1 or be addressed in a performance solution or a combination of both.
- w. It is recommended that provision for special hazards, in accordance with clause E1.10, be made for the workshops due to the natural of the buildings.
- x. It is recommended that provision for special hazards, in accordance with clause E2.3, be made for the workshops due to the natural of the buildings.

- y. It is recommended that emergency lighting be installed in every passageway, corridor, hallway or the like that is in a path of travel to an exit and any room having a floor area greater than 300 m².
 - z. The required emergency lighting system is to comply with BCA 2019 Amdt 1 Clause E4.2, E4.4 and AS/NZS 2293.1 - 2018.
 - aa. It is recommended that exit signs be installed in each building to comply with BCA 2019 Amdt 1 Clauses E4.5, NSW E4.6 and E4.8 and AS/NZS 2293.1 - 2018.
 - bb. If required directional signs are to be installed to meet the requirements of BCA 2019 Amdt 1 Clauses E4.5, NSW E4.6 and E4.8 and AS/NZS 2293.1 - 2018.
2. Upon completion of works, certification from a Registered Building Surveyor, minimum Registered Building Surveyor - Unrestricted under the *Building and Development Certifiers Act 2018*, shall be submitted to Council confirming works have been completed in accordance with Item 1 (a-bb) above and the attached Fire Safety Schedule.

A Final Fire Safety Certificate complying with Division 4, Part 9 of the *Environmental Planning and Assessment Regulation 2000* shall accompany the certification.

The Order must be complied with within two (2) years of the date of endorsement.

Reason for the Order

1. The Building Code of Australia (BCA) Fire Safety Audit and Upgrade Report dated 9 June 2021 prepared by Zac Wilkins and Andrew Brohier of McKenzie Group, advises that the provisions for fire safety or fire safety awareness at the premises are inadequate to prevent fire, suppress fire or prevent the spread of fire or ensure or promote the safety of persons in the event of fire.
2. Given the received report, Council is concerned about the safety of the occupants of the building in the event of fire.

You are advised that you may appeal to the Land and Environment Court against this Order or a specified part of the Order under the provisions Part 9, Division 9.3, Schedule 5, Part 4 of the Act. Such appeal must be made within **twenty-eight (28) days** after the service of this Order.

Failure to comply with the requirements of this Order is an offence pursuant to Part 9, Division 9, Section 9.37 of the *Environmental Planning and Assessment Act, 1979*. The maximum penalty for such an offence is \$5 million with a further daily maximum penalty not exceeding \$50,000.

If you have any further enquiries in this regard, please contact Mr Simon Hitchcock between the hours of 9.30am and 11.00am, Monday to Friday, on telephone number **9936 8100**, or at any time via Council's email address council@northsydney.nsw.gov.au.

Yours faithfully



**LONG HUYNH
TEAM LEADER - BUILDING COMPLIANCE**

Date Endorsed: 27 July 2021

c.c. Fire and Rescue NSW, Locked Bag 12, Greenacre NSW 2190
Hamptons Property Services C/- Kristy Hodgkinson - kristyh@hamptonspropertyservices.com.au

Fire Safety Schedule 6 John Street, McMahons Point				
Class 8 Workshops				
Item No.	Measure	Standard of Performance	Existing	Proposed
1.	Emergency Lighting	BCA 2019 Amdt 1 Clause E4.2, E4.4 and AS/NZS 2293.1 - 2018	-	X
2.	Exit Signs	BCA 2019 Amdt 1 Clauses E4.5, NSW E4.6 and E4.8 and AS/NZS 2293.1 - 2018	-	X
3.	Fire Hose Reel Systems	BCA 2019 Amdt 1 Clause E1.4 and AS 2441 - 2005 Amdt 1	X	X
4.	Fire Hydrant Systems	BCA 2019 Amdt 1 Clause E1.3 and AS 2419.1 - 2005 Amdt 1	-	X
5.	Portable Fire Extinguishers	BCA 2019 Amdt 1 Clause E1.6 and AS 2444 - 2001	X	X
6.	Warning and Operational Signs	BCA 2019 Amdt 1 Clause C3.6, D2.23, E3.3 and H101.8	-	X
Class 5 Office				
1.	Emergency Lighting	BCA 2019 Amdt 1 Clause E4.2, E4.4 and AS/NZS 2293.1 - 2018	-	X
2.	Exit Signs	BCA 2019 Amdt 1 Clauses E4.5, NSW E4.6 and E4.8 and AS/NZS 2293.1 - 2018	-	X
3.	Portable Fire Extinguishers	BCA 2019 Amdt 1 Clause E1.6 and AS 2444 - 2001	X	X
4.	Warning and Operational Signs	BCA 2019 Amdt 1 Clause C3.6, D2.23, E3.3 and H101.8	-	X



NORTH SYDNEY COUNCIL

200 Miller Street, North Sydney, NSW 2060 | ABN 32 353 260 317
All correspondence PO Box 12, North Sydney, NSW 2059
P (02) 9936 8100 | **E** council@northsydney.nsw.gov.au
W www.northsydney.nsw.gov.au

Stannards Marine Pty Ltd
Level 2, Suite 6
448 Pacific Highway
ARTARMON NSW 2064

SD5 (CIS)

Dear Sir/Madam

RE: DEVELOPMENT CONTROL ORDER NOS. 3 AND 11, UNDER DIVISION 9.3 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

PROPERTY: 6 JOHN STREET, MCMAHONS POINT NSW 2060
Lot 987 DP 752067, Lot 2 DP 77853, Lot 1 DP 449731, Lot A DP 420377, Lot B DP 420377, Lot 1 DP 179730, Lot 2 DP 179730, Lot 3 DP 179730 and Lot 4 DP 179730

I refer to the Notice of Intention to issue a Development Control Order ('Notice'), issued by Council on 13 December 2021, for 1) the demolition of the relocatable shed subject to the refused Building Information Certificate application ('BIC') and; 2) to comply with approved Plan No. 904/101, Revision A, of Development Consent No. 1164/90, by undertaking the demolition of the caretaker's shed and; 3) to construct a public jetty in accordance with Condition D51 at 6 John Street, McMahons Point.

Council records indicate that representations to this Notice were received on 22 December 2021 and have now been reviewed and considered. The representations place weight on the lodgement of a building information certificate application for the construction of the unauthorised relocatable shed and a development application for the use of the relocatable shed. The representations also reflect a demolition date for the caretaker's unit, being 28 February 2022, and seeks Council representative contact details for the construction of the public jetty.

Furthermore, there did not appear to be any information within the representation indicating the proposed Order is factually unfair nor incorrect.

Accordingly, please find attached Order Nos. 3 and 11 in accordance with section 9.34, and the terms of Orders in the tables to Part 1 of Schedule 5 to the *Environmental Planning and Assessment Act 1979* (the "EP&A Act"). You are hereby required to complete the works directed in the attached Development Control Order ("Order").

As requested within your representation, below are the details for contact regarding the construction of the public jetty in accordance with Term 2 of Order No 11:

Council Officer: Mr Stuart Delphin
Phone: (02) 9936 8100
Email: stuart.delphin@northsydney.nsw.gov.au

- 2 -

The circumstances and reasons for this course of action are detailed in the formal Order documentation attached to this letter.

I trust you will attend to this matter accordingly.

For any further enquiries in this regard, please contact Mr Stuart Delphin between the hours of 9.30 am and 11.00 am, Monday to Friday, on telephone number **9936 8100**, or at any time via Council's email at council@northsydney.nsw.gov.au.

Yours faithfully



MARISE VAN DER WALT
MANAGER - ENVIRONMENT AND BUILDING COMPLIANCE

Endorsed Date: 01 / 02 / 2022.

cc: Nigel Robin Warner, 5 Reely Street, Pymble NSW 2073
Andrew Lee Stannard, 6 Rawson Crescent, Pymble NSW 2073
Noakes Group Pty Ltd, 6 John Street, McMahons Point NSW 2060
Sean Langman, 23 Earl Street, Hunters Hill NSW 2110



**NORTH SYDNEY
COUNCIL**

200 Miller Street, North Sydney, NSW 2060 | ABN 32 353 260 317
All correspondence PO Box 12, North Sydney, NSW 2059
P (02) 9936 8100 | **E** council@northsydney.nsw.gov.au
W www.northsydney.nsw.gov.au

Stannards Marine Pty Ltd
Level 2, Suite 6
448 Pacific Highway
ARTARMON NSW 2064

SD5 (CIS)

Dear Sir/Madam

**DEVELOPMENT CONTROL ORDER NOS. 3 AND 11, UNDER DIVISION 9.3 OF THE
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

PROPERTY: 6 JOHN STREET, MCMAHONS POINT NSW 2060
**Lot 987 DP 752067, Lot 2 DP 77853, Lot 1 DP 449731, Lot A DP 420377, Lot B
DP 420377, Lot 1 DP 179730, Lot 2 DP 179730, Lot 3 DP 179730 and Lot 4 DP
179730**

Notice is hereby given that NORTH SYDNEY COUNCIL, intends to serve Stannards Marine Pty Ltd, as the registered owners of the above address, with a Development Control Order - General Order, under Part 9, Division 9.3, Section 9.34, Schedule 5, Part 1, Item Nos. 3 and 11 of the *Environmental Planning and Assessment Act, 1979* as follows, in circumstances where a building requiring a planning approval is erected without approval and a planning approval has not been complied with:

Terms of Proposed Order No. 3:

1. Under the supervision of a registered practicing Structural Engineer and in accordance with *AS 2601-2001, 'The demolition of Structures'*, engage the services of a suitably qualified licenced tradesperson to demolish the relocatable shed subject to the refused Building Information Certificate application (BIC), reference C29/20, contained within the boat repair facility at 6 John Street, McMahons Point.
2. At the completion of demolition, provide written certification by the Structural Engineer, certifying the demolition has been carried out in accordance with *AS 2601-2001, 'The demolition of Structures'* and to Council's satisfactions.

Terms of Proposed Order No. 11:

1. Comply with approved Plan No 904/101, Revision A, of Development Consent No. 1164/90, by undertaking the demolition of the caretakers shed located within northern carpark at 6 John Street, McMahons Point (copy of plan attached). The demolition is to be undertaken by a suitably qualified licenced tradesperson and under the supervision of a registered practicing Structural Engineer and in accordance with *AS 2601-2001, 'The demolition of Structures'*.

2. Comply with Development Consent No. 1164/90, determined by North Sydney Council on 15 July 1991, by constructing a public jetty in accordance with Condition D51.

Condition D51:

“The developer shall at no cost to the Council provide a public jetty extending from land below John Street, approximately in the location of the former sea baths, subject to the design and position being acceptable to Council. This jetty shall be completed and available for use prior to substantial completion of the approved building works.”

Reasons for Proposed Order(s):

1. The Caretaker’s shed has been constructed within the northern carpark at 6 John Street, McMahons Point, and identified in Development Consent No. 1164/90, to be demolished and *Noakes* intention to demolish the Caretakers shed has been accepted by Council.
2. Council’s investigation on 21 January 2021, undertaken by Council’s Senior Building Surveyor, Mr Simon Hitchcock, in response to a Building Information Certificate application, reference C29/20, revealed that a relocatable shed has been constructed within the boat repair facility at 6 John Street, McMahons Point, without the benefit of a Development Consent or endorsed Construction Certificate.
3. Development Application No. DA11/21, for the use of the relocatable shed subject to the Building Information Certificate Application, was determined by the North Sydney Local Planning Panel on 2 June 2021, which resulted in the application being refused.
4. The Structural Engineering Assessment and Certification Report dated 4 December 2020, prepared by Zlatko Gashi of M+G Consulting, that accompanied the Building Information Certificate application, reference C29/20, identifies that the as-built structure requires building works to ensure that the relocatable shed is structurally adequate for its intended use.
5. A subsequent deemed refusal of the Building Information Certificate C29/20 was determined on 9 June 2021, for the installation of a relocatable shed contained within the boat repair facility at 6 John Street, McMahons Point.
6. On 22 October 2018, a meeting between Council staff and a representative of Stannard Marine Pty Ltd and Noakes Group, advised that Stannard Marine Pty Ltd was willing to construct the required public jetty, with Council taking care and control of the asset after completion.
7. It is in the public interest that the public jetty is constructed as soon as practicable.

Proposed Period for Compliance - Order 3:

Term 1 of the Order must be complied with within sixty (60) days of the endorsed date.

Term 2 of the Order must be complied with within seven (7) days from the above Term 1.

- 3 -

Proposed Period for Compliance - Order 11:

Term 1 of the Order must be complied with within sixty (60) days of the endorsed date.

Term 2 of the Order must be complied with within twelve (12) months of the endorsed date.

You are advised that you may appeal to the Land and Environment Court against this Order or a specified part of the Order under the provisions of Part 8, Division 8.5 Section 8.18 of the *Environmental Planning and Assessment Act 1979* (the Act). Such appeal must be made within **twenty-eight (28) days** after the service of this Order.

Failure to comply with the requirements of this Order on or before the specified date is an offence pursuant to Part 9, Division 9.3 Section 9.37 of the *Environmental Planning and Assessment Act 1979*.

For any further enquiries in this regard, please contact Mr Stuart Delphin between the hours of 9.30 am and 11.00 am, Monday to Friday, on telephone number **9936 8100**, or at any time via Council's email at council@northsydney.nsw.gov.au.

Yours faithfully



**MARISE VAN DER WALT
MANAGER - ENVIRONMENT AND BUILDING COMPLIANCE**

Endorsed Date: 01 February 2022

cc: Nigel Robin Warner, 5 Reely Street, Pymble NSW 2073
Andrew Lee Stannard, 6 Rawson Crescent, Pymble NSW 2073
Noakes Group Pty Ltd, 6 John Street, McMahons Point NSW 2060
Sean Langman, 23 Earl Street, Hunters Hill NSW 2110



Deed of Settlement

Noakes Group Pty Limited

and

North Sydney Council

Ref AH,KRM:978214

Doc ID 796948593/v1

Level 14, Australia Square, 264-278 George Street Sydney NSW Australia
DX 129 Sydney

Telephone (02) 9334 8477
Facsimile 1300 369 656
hwlebsworth.com.au

Table of contents

ABN 32 353 260 317 of 200 Miller Street, North Sydney NSW 2060	1
1. Definitions and interpretation clauses	2
1.1 Definitions	2
1.2 Interpretation	4
1.3 Business Day	5
2. Agreement	5
3. Confidentiality	7
4. No fetter	8
5. Enforcement	8
6. Notices	8
6.1 Notice requirements	8
6.2 When Notices considered given and received	8
6.3 Nominated Contact Details	9
7. General	9
7.1 Variation	9
7.2 Costs and expenses	9
7.3 Waiver	9
7.4 Severance	10
7.5 Governing law and jurisdiction	10
7.6 Further assurances	10
7.7 No reliance	10
7.8 Entire agreement	10
7.9 Counterparts	10
Annexure A - Plan showing Caretakers Unit, Mobile Structure and Worksheds	12
Annexure B - Draft Section 34 Agreement	13
Annexure C - Plan showing Site	15
Annexure D - Plan showing northern slipway	16

EBSWORTH

Annexure E - Plan showing where Non-Commercial Boats to be kept	17
Annexure F - Plan showing area for Minor Repair Works	18
Signing page	19

EBSWORTH

Deed of Settlement

Date

Parties **Noakes Group Pty Limited ACN 002 057 294 of 6 John Street, McMahon's Point NSW 2059**

Applicant

North Sydney Council
ABN 32 353 260 317 of 200 Miller Street, North Sydney NSW 2060

Respondent

-
- Recitals
- A. The Applicant is the applicant in the Proceedings.
 - B. The Applicant is the defendant in the Local Court Proceedings.
 - C. The Applicant is the operator of a commercial boatyard on the Site.
 - D. The Respondent is the respondent in the Proceedings.
 - E. The Respondent is the prosecutor in the Local Court Proceedings.
 - F. The Site has the benefit of Development Consent DA 1164/90 and the Part 5 Approval.
 - G. The parties are in dispute as to the application of Development Consent DA 1164/90 and the Part 5 Approval to the Site, and the activities carried out at the Site.
 - H. In or about March 2020, the Respondent issued the PIN.
 - I. On 17 April 2020, the Applicant elected for the PIN to be heard in the Local Court.
 - J. On 30 March 2020, the Respondent issued the DCO subject of the Proceedings.
 - K. On 24 April 2020, the Applicant commenced the Proceedings.
 - L. On 7 August 2020, the Proceedings were referred to mediation pursuant to section 26 of the *Civil Procedure Act 2005* together with a resumed conciliation conference under section 34 of the *Land and Environment Court Act 1979*.
 - M. The parties have agreed to resolve the Proceedings and the Local Court Proceedings by entering into an agreement in the form of the Draft Section 34 Agreement, to effect revocation of the DCO.

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed the parties agree as follows:



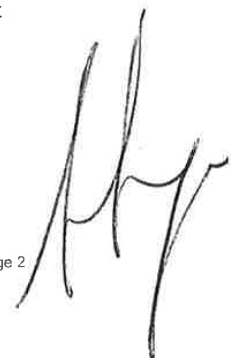
EBSWORTH

1. Definitions and interpretation clauses

1.1 Definitions

In this deed:

Agreement	means the terms of agreement in this deed.
Blasting Activities	means any abrasive blasting processes that use sand with compressed air or sodium bicarbonate with compressed air.
Building Information Certificate	has the same meaning as in section 6.26(2) of the EPA Act.
Building Information Certificate Application	means an application or separate applications made in accordance with Division 6.7 of the EPA Act, in relation to the Caretakers Unit and the Mobile Structure.
Business Day	means a day on which banks are open for business in Sydney in the State of New South Wales excluding a Saturday, Sunday or public holiday in that city.
Caretakers Unit	means the structure located on the Site in the location shown on the plan in Annexure A.
DCO	means the development control order issued by the Respondent on 30 March 2020 pursuant to Schedule 5, Part I, Item 11 of the EPA Act.
Development Application	means a development application or modification application of Development Consent 1164/90, made in accordance with the EPA Act.
Development Consent	has the same meaning as in the EPA Act.
Development Consent DA 1164/90	means development consent DA1164/90 issued by North Sydney Council on 20 December 1990, as modified on 15 July 1991 and 16 September 1992, and Building Approval 91/690 issued by North Sydney Council on 19 March 1992.
Draft Section 34 Agreement	means the draft agreement provided at Annexure B which the parties intend will be made by the Land and Environment Court pursuant to section 34(3) of the Land and Environment Court Act 1979.
End Date	means the earlier of: <ol style="list-style-type: none"> 1. the Sunset Date; or 2. the later of the following:



EBSWORTH

- (a) the final determination of the applications referred to in clauses 2.2.a and 2.2.d of this deed, either by North Sydney Local Court or the Land and Environment Court NSW, if an appeal is lodged within 30 days of any determination by North Sydney Council; and
- (b) final determination of the applications referred to in clauses 2.2.b, 2.2.e and 2.2.g of this deed, either by North Sydney Local Court or the Land and Environment Court NSW, if an appeal is lodged within 30 days of any determination by North Sydney Council or in the event that a Development Consent is granted in respect of the matters in clauses 2.2.b, 2.2.e and 2.2.g of this deed, notification of commencement of the Development Consents in accordance with clause 2.2.s; and

EPA Act	means the <i>Environmental Planning and Assessment Act 1979</i> .
EPL	means the Environment Protection Licence Number 10893 issued by the NSW EPA and as amended.
Execution Date	means the date this deed was executed by the last of the parties.
Interim Period -	means the period between the Execution Date and the End Date.
L10	means the noise level exceeded for 10% of the time of the measurement duration.
Site	means the whole area comprising the commercial boatyard operated by the Applicant including the land the wharves and berths, as shown highlighted in pink on the plan in Annexure C.
Sunset Date	means the date that is 18 calendar months after the Execution Date or such other date as the parties may agree in writing.
Local Court Proceedings	means proceeding No. 2020/00137244 before the Local Court of New South Wales with respect to the PIN.
Minor Repair Works	means the preparation and painting of isolated damaged areas of boats, the total of which isolated damaged areas must not exceed 10 square metres for each boat and documentary evidence of which is to be provided to Council upon request.
Mobile Structure	means the structure located on the Site in the location as shown on the plan in Annexure A.
Non-Commercial Boats	means boats (including 'the Morna') which are kept on the Site other than for commercial purposes.
Northern Slipway	Means the area marked as 'Northern Slipway' on the plan in Annexure D.
Occupation Certificate	has the same meaning as in the EPA Act.

Page 3



Doc ID 796948593/v1

Part 5 Approval	means the activity approval issued by the Maritime Services Board dated 15 November 1990.
PIN	means the penalty infringement notice issued by Council under section 4.2(1)(b) of the EPA Act for development not in accordance with a development consent.
Proceedings	means the proceedings in the Land and Environment Court of New South Wales bearing case number 2020/00122833.
Spray Painting	means the application of paints (including anti foulant) via a high pressure spray technique whether or not the technique uses compressed air.
Worksheds	means the buildings shown highlighted on the plan in Annexure A.

1.2 Interpretation

In this deed, unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality);
- (f) a reference to anything (including any right) includes a part of that thing, but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this deed and a reference to this deed includes any clause, annexure, exhibit and schedule;
- (h) a reference to a document (including this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to time is to Sydney, New South Wales, Australia time;

F W
EBSWORTH

- (k) a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- (l) a reference to an agreement other than this deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (m) a reference to a document includes any agreement or contract in writing, or any certificate, notice, deed, instrument or other document of any kind;
- (n) a provision of this deed may not be construed adversely to a party solely on the ground that the party (or that party's representative) was responsible for the preparation of this deed or the preparation or proposal of that provision;
- (o) a reference to a body, other than a party to this deed (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (p) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this deed do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (q) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (r) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day; and
- (s) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day.

1.3 Business Day

If anything under this deed is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day.

2. Agreement

- 2.1 Without admissions, the Applicant and the Respondent agree to the terms of this deed to resolve the Proceedings and the Local Court Proceedings.
- 2.2 The Applicant agrees:
 - a. to lodge by 24 December 2020 an application for a Building Information Certificate to the Respondent, in relation to the Caretaker's Unit;
 - b. to lodge by 24 December 2020 the Development Application to the Respondent, for use of the Caretaker's Unit;

Page 5

Doc ID 796948593/v1

EBSWORTH

- c. to not use the Caretaker's Unit until and unless both a Building Information Certificate has issued for the Caretaker's Unit structure and a Development Consent for the use of the Caretaker Unit has been granted;
- d. to lodge by 24 December 2020, an application for a Building Information Certificate to the Respondent, in relation to the Mobile Structure;
- e. to lodge by 24 December 2020, a Development Application to the Respondent for use of the Mobile Structure;
- f. subject to clause 2j, to not use the Mobile Structure until and unless both a Building Information Certificate has issued for the Mobile Structure and a Development Consent for the use of the Mobile Structure has been granted;
- g. to lodge by 1 February 2021, a Development Application seeking consent for the use of the Site, consistent with that permitted by the EPL and any amendment to condition D50 of the Development Consent 1164/90;
- h. to not keep or permit to be kept more than a maximum of 30 boats in total on the Site during the Interim Period;
- i. that during the Interim Period it will ensure that no more than 4 Non-Commercial Boats will be kept on the Site;
- j. that during the Interim Period it will keep the Non-commercial boats in the locations identified on the plan at Annexure E to this deed;
- k. that during the Interim Period any Spray Painting or Blasting Activities must only occur in the Worksheds with the exception of Minor Repair Works which may be carried out in the area on the Site shown outlined on the map in Annexure F;
- l. that during the Interim Period it will ensure that the operations at the Site do not generate noise levels when measured at the boundary of any neighbouring residential developments, which exceed:
 - (i) at John Street L10 = 57dBa
 - (ii) at Dumbarton Street L10 = 45dBA
 - (iii) at Munro Street L10 = 49dBA;
- m. to not carry out Spray Painting or Blasting Activities in the Northern Slipway during the Interim Period;
- n. that during the Interim Period, to not cause or permit the application of anti foulant to boats outside of a Workshed other than by roller, brush or airless spray technique and only when encapsulated / screened using shade cloth, plastic or the like;
- o. to comply with Development Consent DA 1164/90, the Part 5 Approval and the terms of the EPL except where provided to the contrary for the matters set out in this deed;
- p. to prosecute with due dispatch, including seeking a determination by lodging any appeal to the Land and Environment Court NSW, the applications foreshadowed in paragraphs 2.2(a), 2.2(b), 2.2(d), 2.2(e) and 2.2(g) of this deed;



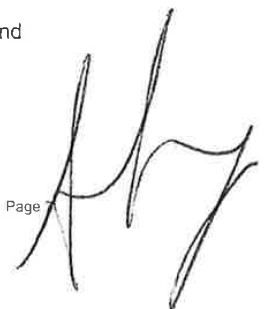
EBSWORTH

- q. In the event that any Development Application to modify condition D50 of Development Consent 1164/90 is refused by the Council, or following an appeal, refused by the Land and Environment Court of NSW, the Applicant will reduce the number of boats kept on the Site to 26, unless or until development consent is obtained for a greater number;
- r. to notify Council within 2 weeks of such commencement of the commencement of any Development Consent granted in relation to the Development Applications referred to in clauses 2.2.b, 2.2.e, 2.2.f; and
- s. to approach the Land and Environment Court NSW within 5 Business Days of the date of this deed to request that it make a decision in accordance with the terms of the s34 Agreement at Annexure B to this Agreement pursuant to s34(3) of the Land and Environment Court Act 1979.
- 2.3 For clarity, the Applicant agrees that no works shall be undertaken to any Non-Commercial Boats when stored in the Mobile Structure for the duration of this deed.
- 2.4 In consideration of the Applicant's agreement in paragraph 2.2 of the Agreement, the Respondent agrees to:
- a. withdraw the Local Court Proceedings within 7 days of the date of this deed;
 - b. approach the Land and Environment Court NSW within 5 Business Days of the date of this deed to request that it make a decision in accordance with the terms of the s34 Agreement at Annexure B to this Agreement pursuant to s34(3) of the *Land and Environment Court Act 1979*.
- 2.5 The parties agree that paragraphs 2.2(c), 2.2(f), 2.2(h), 2.2(i), 3(j), 2.2(k), 2.2(l), 2.2(m), 2.2(n), 2.2(o), 2.2(p), 2.5(a) and 2.5(b) are essential terms of this deed.
- 2.6 The parties agree that this deed shall not be construed as a consent or permission under any legislation.
- 2.7 In the event that:
- (a) the Applicant notifies the Respondent in accordance with clause 2.2.r of commencement of a Development Consent granted in respect of any of the matters in clauses 2.2.b, 2.2.e, 2.2.f; or
 - (b) a Building Information Certificate is issued in respect of, any of the matters in clauses to 2.2.a, 2.2.d,
- of this deed, this deed shall cease to have effect in relation to those matters.

3. Confidentiality

- 3.1 The parties agree that the existence and contents of this deed are not confidential and that the parties may disclose the contents of this deed, in the absence of any prior approval of the non-disclosing party.

Page



4. No fetter

- 4.1 This deed is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to any Application or any other application for Development Consent (all referred to in this agreement as a "Discretion").

5. Enforcement

- 5.1 In the event a party (**Non-Defaulting Party**) considers the other party has failed to perform and fulfil an obligation of a non-essential term under this deed (**Defaulting Party**), it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within 7 days.
- 5.2 If the matters stipulated by the Default Notice are not rectified within 7 days, the Non-Defaulting party may terminate this deed by giving notice to the Defaulting Party and take any other action which may be available to the Non-Defaulting Party to enforce the terms of this deed, including seeking orders pursuant to section 29 of the *Civil Procedure Act 2005*, to give effect to this deed.
- 5.3 Either party may terminate this deed, upon 7 days written notice to the other party, in the case of a breach of an essential term, as that term is defined in section 2.6 of this deed.

6. Notices

6.1 Notice requirements

Any notice, demand, approval, consent or other communication under this deed (**Notice**) must be in writing in English or accompanied by a certified translation into English and must be:

- (a) delivered personally; or
- (b) sent by regular post (or airmail if posted to or from a place outside Australia),
to a party at:
 - (c) the address of the party set out in clause 6.3 (**Nominated Contact Details**); or
 - (d) such other contact details as the party may from time to time notify to the other party for the purposes of, and in accordance with, this clause.

6.2 When Notices considered given and received

A Notice given in accordance with clause 4 takes effect when received (or such later time as specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;

EBSWORTH

- (b) if sent from and to a place within Australia by regular post, at 9:00 am on the sixth Business Day after the date of posting;
- (c) if sent from a place within Australia to a place outside Australia by airmail, at 9.00 am on the tenth Business Day after the date of posting;
- (d) if sent from a place outside Australia by airmail, at 9.00 am on the twelfth Business Day after the date of posting,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00 pm on a Business Day, the Notice is taken to be received at 9.00 am on the next Business Day after that delivery, receipt or transmission.

6.3 Nominated Contact Details

For the purposes of this clause 6.1, the Nominated Contact Details of the parties are as follows:

- (a) The Applicant:

Sean Langman, Noakes Group Pty Ltd, 6 John Street McMahons Point 2029,
sean@noakes .net.au

- (b) The Respondent:

Craig Winn, 200 Miller Street, North Sydney NSW 2060

7. General

7.1 Variation

A variation of any term of this deed will be of no force or effect unless it is by way of deed and signed by each of the parties.

7.2 Costs and expenses

Each party must pay its own costs (including legal costs) and expenses in connection with the negotiation, preparation, execution and delivery of this deed.

7.3 Waiver

- (a) A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver.
- (b) A party does not waive a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power.



HW
EBSWORTH

- (c) A waiver given by a party in accordance with clause 7.3(a):
 - (i) is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be construed as a waiver of that obligation or breach on any other occasion; and
 - (ii) does not preclude that party from enforcing or exercising any other right, remedy or power under this deed nor is it to be construed as a waiver of any other obligation or breach.

7.4 Severance

If a provision in this deed is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this deed for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this deed.

7.5 Governing law and jurisdiction

- (a) This deed is governed by and is to be construed under the laws in force in New South Wales, Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

7.6 Further assurances

Each party must, at its own expense, do all things and execute all further documents necessary to give full effect to this deed and the transactions contemplated by it.

7.7 No reliance

Neither party has relied on any statement by the other party which has not been expressly included in this deed.

7.8 Entire agreement

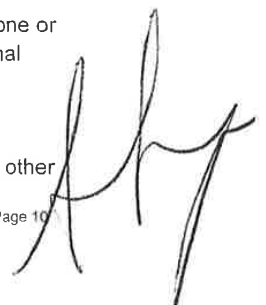
This deed states all of the express terms agreed by the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

7.9 Counterparts

- (a) This deed may be executed in any number of counterparts, each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document.
- (b) A party that has executed a counterpart of this deed may exchange that counterpart with another party by faxing or emailing it, by way of PDF, to the other

Page 10

Doc ID 796948593/v1



EBSWORTH

party or the other party's legal representative and it is intended that such exchange is to take effect as delivery of this deed.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

Annexure A - Plan showing Caretakers Unit, Mobile Structure and Worksheds



EBSWORTH

Annexure B - Draft Section 34 Agreement

Form A (version 2)

**AGREEMENT BETWEEN THE PARTIES
SECTION 34(3) LAND & ENVIRONMENT COURT ACT 1979**

COURT DETAILS

Court Land and Environment Court of New South Wales
Class 1
Case number 2020/00122833

TITLE OF PROCEEDINGS

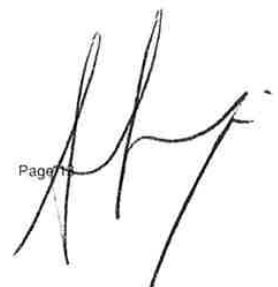
Applicant **NOAKES GROUP PTY LTD ABN 36002057294**
Respondent **NORTH SYDNEY COUNCIL
ABN 32353260317**

FILING DETAILS

Filed for **Noakes Group Pty Ltd, Applicant**
Legal representative Richard John Bain Allsop
Allsop Glover Lawyers
Legal representative reference
Contact name and telephone Richard Allsop Tel. 02 8224 0900

Doc ID 796948593/v1

Page 49



TERMS OF AGREEMENT

1. The Court notes that the parties have:
 - (a) reached agreement on terms set out on the deed annexed to this agreement and marked A; and
 - (b) agreed as to the terms of a decision in the proceedings that would be acceptable to the parties (being a decision that the Court could have made in the proper exercise of its functions).
2. The terms of the decision as agreed by the parties are as follows:
 - (a) The appeal is upheld.
 - (b) Development Control Order issued by North Sydney Council pursuant to Part 9, Division 9.3, section 9.34 (Schedule 5, Part 1, Item 11) of the Environmental Planning and Assessment Act 1979 is revoked.
3. Pursuant to section 34(3)(a) and (b) of the *Land and Environment Court Act* NSW 1979, the parties request the Commissioner to dispose of the proceedings in accordance with the terms of the decision set out in paragraph 2 above.
4. The Court notes that each party will pay its own costs of the proceedings.

SIGNATURES

Applicant

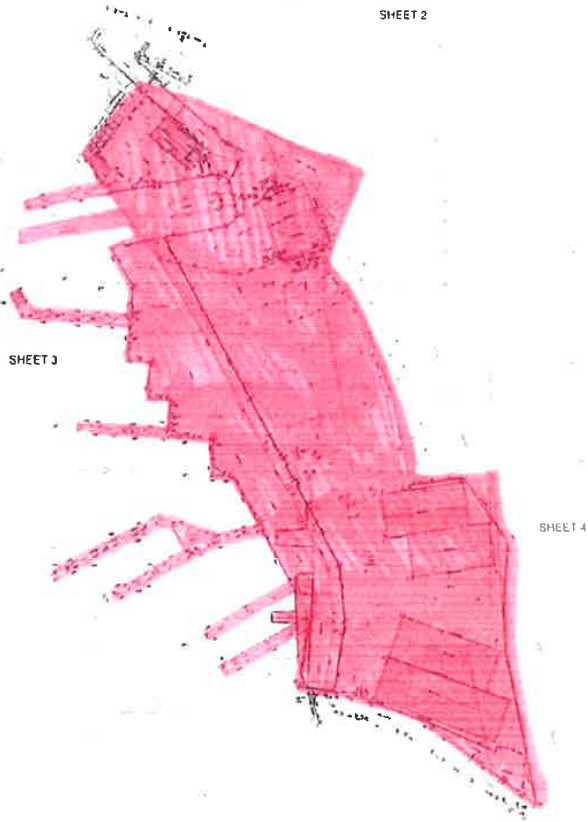
Signature of legal representative _____
Capacity Solicitor
Date of signature

Respondent

Signature of legal representative _____
Capacity Solicitor
Date of signature



Annexure C - Plan showing Site



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned in the bottom right corner of the page.

Annexure D - Plan showing northern slipway



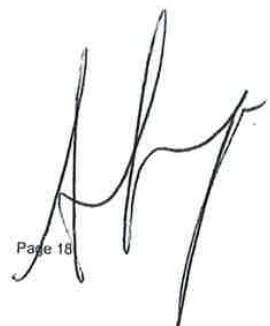
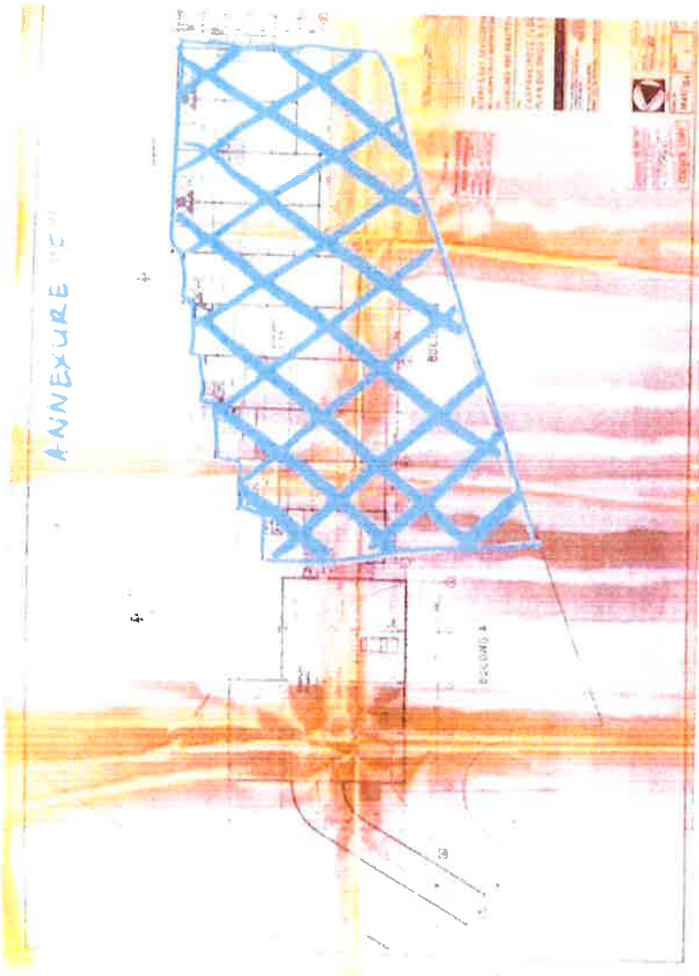
Page 16

Annexure E - Plan showing where Non-Commercial Boats to be kept



Page 17

Annexure F - Plan showing area for Minor Repair Works



Page 18

EBSWORTH

Signing page

Executed as a deed

Signed on behalf of North Sydney Council
by its duly authorised officer in the presence
of:

Signature of witness

Signature of authorised officer

Full name (print)

Full name (print)

Signed by Noakes Group Pty Ltd ACN 353
260 317 in accordance with section 127 of
the Corporations Act 2001 (Cth):

Director

Director/Secretary

SEAN ALEXANDER TATNALL LANGMAN

SEAN ALEXANDER TATNALL LANGMAN

Full name (print)

Full name (print)