

Original signed by George Youhanna on 22/12/2017

Date determined: 19/12/2017

Date operates: 22/12/2017

Date lapses: N/A

Aqualand Development 4 Pty Ltd  
Level 47, 100 Barangaroo Avenue  
BARANGAROO NSW 2000

D112/01  
(GJY) (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979  
(AS AMENDED)**

**Notice to Applicant of Determination of Request  
to Modify a Development Consent**

Pursuant to Section 96 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **112/01** and registered in Council's records as Application No. **112/01/11** relating to the land described as **61 Lavender Street, Milsons Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 12 May 2003, has been determined in the following manner: -

1. Condition A1 be amended.
2. Condition A4. To be deleted.
3. Conditions B1. and B2. to be deleted.
4. Condition C1 moved to G condition.
5. Condition C2 to be deleted and replaced with new conditions F9, F10, F11:
6. Condition C5 to be amended as follows (deletion of paragraph (b):
7. Condition C12 reference to 1993 removed.
8. Condition C16 to be deleted and replaced with new condition B1:
9. Condition C31 be amended:
10. Condition D2 to be deleted
11. Condition E1 to be deleted.
12. Condition E2 to be deleted and replaced with A4:
13. Condition E4 to be deleted
14. Condition E6 to be deleted and replaced with conditions C37 and E18:
15. Condition E8 to be deleted and replaced with new condition E8:
16. Condition E13 to be deleted and replaced with new condition E13:
17. Condition G7 to be deleted.

The amended conditions as a result of this Section 96 application and the previous nine modifications have been compiled into a consolidated set of conditions, given below. The numbering of some conditions has altered as a result.

**A. Conditions that Identify Approved Plans****Development in Accordance with Plans**

A1. The development being carried out in accordance with the following drawings:

<b>Plan No.</b>	<b>Issue</b>	<b>Title</b>	<b>Drawn by</b>	<b>Dated</b>
A-049	A	Basement B4	PTW	23/11/17
A-050	R	Basement B3	PTW	23/11/17
A-051	R	Basement B2	PTW	23/11/17
A-052	R	Basement B1	PTW	23/11/17
A-053	T	Ground Floor	PTW	23/11/17
A-054	S	Level 1	PTW	23/11/17
A-055	Q	Level 2-3 typical	PTW	23/11/17
A-056	Q	Level 4-7 typical	PTW	23/11/17
A-057A	Q	Level 8-17 typical	PTW	23/11/17
A-071	Q	Level 18	PTW	23/11/17
A-072	Q	Level 19	PTW	23/11/17
A-073	Q	Level 20	PTW	23/11/17
A-074	R	Upper roof plant	PTW	23/11/17
A-100	M	North Elevation	PTW	4/9/17
A-102	L	South Elevation	PTW	4/9/17
A-104	L	East Elevation	PTW	4/9/17
A-106	L	West Elevation	PTW	4/9/17
A-110	P	Section AA	PTW	23/11/17
A-111	Q	Section BB	PTW	24/11/17
A-130	K	Sample Board	PTW	6/1/17
A-140	B	Upper Roof	PTW	4/9/17
A-141	K	Aneeta Operable Facade	PTW	20/7/17

except where amended by the following conditions.

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

**Plans on Site**

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

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

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

### **External Finishes & Materials**

- A3. External finishes and materials must be in accordance with the submitted schedule A-130, Issue K, titled "Sample Board, prepared by PTW unless otherwise modified by Council in writing.

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

### ***B. Conditions that require 'Ancillary' Matters to be Completed to the Satisfaction of Council or another Nominated Person Prior to Issue of Construction Certificate***

### **Construction Management Program**

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

- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
  - i. Dedicated temporary construction site driveway entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways and footways;
  - ii. The proposed signage for pedestrian management to comply with the relevant Australian Standards, including pram ramps;
  - iii. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
  - iv. The locations of any proposed Work Zones in the frontage roadways (to be approved by Council's Traffic Committee);
  - v. Locations of hoardings proposed;
  - vi. Location of any proposed crane standing areas;
  - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
  - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
  - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.
- b) A detailed heavy vehicle access route map through the Council area to Arterial Roads. Provision is to be made to ensure through traffic is maintained at all times.
- c) The proposed phases of works on the site, and the expected duration of each phase.

- d) How access to neighbouring properties will be maintained at all times and the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of process.
- e) The road is not to be used as a waiting area for trucks delivering to or awaiting pick up of materials.
- f) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising structural engineer and must not involve any permanent or temporary encroachment onto Council's property.
- g) Proposed protection for Council and adjoining properties. Details are to include site fencing and the provision of "B" class hoardings over footpaths and laneways.
- h) A Waste Management Plan. The Waste Management Plan must include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process.

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

Notes:

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

- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed above.

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

### **Footpath Survey to Accompany Awning Details**

- B2. A detailed survey of the footpath below any proposed awning structure shall accompany any submission. Such survey shall locate and identify obstacles such as gutter pits, trees, poles, signs and the like so as to enable assessment of the submitted awning details.

(Reason: Pedestrian amenity)

- C. Conditions that require Subsidiary Matters to be completed to satisfaction of Council or Accredited Certifier prior to issue of a Construction Certificate***

### **Damage to Public Infrastructure**

- C1. The applicant shall bear the cost of all restoration works to Council's property damaged during the course of this development. The applicant shall advise Council, in writing, of any existing damage to Council property before commencement of the development. A dilapidation survey of Council's assets, including photographs and written record, must be prepared by a suitably qualified person and submitted to Council prior to the submission of an application for Construction Certificate.

**Note:** This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicant's interest for it to be as full and detailed as possible.

(Reason: Protection of existing built public infrastructure)

### **Shoring on Council Property**

- C2. Where any shoring is to be located on or is supporting Council's property, engineering drawings certified by a suitably qualified and practising structural engineer showing all details, including the extent of encroachment and the method of removal, shall be submitted with the Construction Certificate. Where private certification is being utilised for the issue of the Construction Certificate, a copy of this documentation will be provided to the Council for record purposes.

(Reason: Protection of existing public infrastructure)

### **Garbage Bay**

- C3. A garbage bay shall be provided for the storage of garbage bins, or approved containers and household rubbish.
- (a) All internal surfaces of the bay shall be rendered to a smooth surface, coved at the intersection with walls and floor, graded and drained with a water tap in close proximity to facilitate cleaning.

Details are to be provided with the Construction Certificate.

(Reason: Health and Environmental)

### **Recycling Facilities**

- C4. Garbage bay facilities, including provision for the separation and storage in appropriate categories of material suitable for recycling, shall be provided within the subject premises in accordance with Council's Garbage Code. Details are to be provided with the Construction Certificate

**Note:** The applicant may wish to discuss bin storage requirements and location with Council prior to finalisation of the required detail.

(Reason: Environmental)

### **Stormwater**

- C5. Plans certified by an appropriately qualified and practising civil engineer, indicating all engineering details relevant to the site regarding the collection and disposal of stormwater from the site, buildings, and adjacent catchments, shall be submitted with the application for Construction Certificate. Stormwater shall be conveyed from the site to the recurrent Council pipe drainage system in accordance with Australian Standard 3500, National Plumbing and Drainage Code.

(Reason: Local Flooding)

### **Overland Flow**

- C6. Where overland flow occurs to the site, a formal drainage system designed to conform with Council's Stormwater Management Policy, including the creation of appropriate drainage reservations and/or easements where necessary, shall be constructed. Engineering details prepared to appropriate Australian Standards and Council Policy shall be certified by an appropriately qualified and practising civil engineer and provided with the application for a Construction Certificate.

Where adjacent properties are affected by the overland flow of stormwater, drainage formalisation, including the provision of appropriate drainage easements, shall be extended to include those properties to the satisfaction of the adjacent owners.

(Reason: Prevention of local flooding)

### **Sub-Soil Seepage**

C7. All sub-soil seepage drainage shall be discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line. Details of all plans certified as being adequate by an appropriately qualified and practising civil engineer shall be submitted with the application for a Construction Certificate.

(Reason: Local Flooding)

### **Pipeline**

C8. Where connection to Council's nearest stormwater drainage system is required, the applicant shall construct the pipeline in accordance with Council's standard plans and specifications and shall reconstruct all affected kerb and gutter, bitumen reinstatements, adjust all vehicular crossings for paths, grass verges and household stormwater connections to suit the kerb and gutter levels. All works shall be undertaken at the applicant's cost.

(Reason: Local Flooding)

### **Sediment Control**

C9. Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details, including plans and specifications, shall be submitted to Council accompanying the Construction Certificate which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with North Sydney Council Guidelines on Erosion and Sediment Control, or a suitable, alternative method. The Control Plan shall incorporate 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;
- (e) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

(Reason: Protection of the Environment)

### **Design and Survey**

C10. The applicant shall engage an appropriately qualified person to undertake the survey, design and preparation of plans for all works located within Council's property or all works that revert to Council's care and control. The plans are to be certified by an appropriately qualified and practising civil engineer to confirm compliance with appropriate Australian Standards prior to the issue of a Construction Certificate.

(Reason: Safety and amenity)

### **Vehicular Accessway Design**

C11. The applicant shall design the vehicular accessway in compliance with the following:

- (a) The vehicular accessway shall be designed to comply with AS 2890.1 to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or garage floor.
- (b) The width of the vehicular layback shall be 3.5 metres (including the wings).
- (c) The crossing (between the layback and the property boundary) shall be placed on a single straight grade of approximately 4.5%, falling to the back of the layback.
- (d) An appropriately qualified and practising civil engineer shall provide to the Principal Certifying Authority a certificate that, where required, the architectural design drawing has been amended to comply with the Consent. A photocopy of the aforementioned certificate shall be presented with the Construction Certificate

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

### **Footpath Reconstruction**

C12. The applicant shall reconstruct/construct the footpath along the street frontage. The path is to be constructed for the full width of the footpath using concrete paving blocks and is to be constructed to Council's specification. The specification of the paving blocks shall be specified by Council's Development Engineer.



Installation of the paving blocks and associated street trees, grass verges and planter boxes shall be carried out in accordance with the approved landscape plan prior to the issue of a Construction Certificate.

(Reason: Safety and amenity)

### **Bond for Damage**

C13. A Bond of \$20,000 shall be deposited with Council against the construction of kerb and gutter and footpath paving works prior to the issue of a Construction Certificate. (See schedule).

(Reason: Safety and Statutory)

### **Permit for Crossing and Bond**

C14. The applicant shall apply for a vehicle crossing permit and this shall incorporate Council's required and specified levels. The applicant shall construct (reconstruct) full-width concrete vehicular crossings to all entrances and exits in accordance with Council's standard plans and specifications. Construction shall include all service adjustments and shall have regard of adjacent footpaths and kerb and gutter. Such is to be certified by an appropriately qualified and practising civil engineer to the appropriate Australian Standard.

A Bond of \$5,000 shall be deposited with Council against the construction/reconstruction of the vehicular crossing prior to the issue of a construction certificate.

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

### **Crossing Plan Details**

C15. The following details must be submitted with the application for Construction Certificate: -

- (i) Longitudinal section along the extremities and centre-line of each driveway/access ramp at a scale of 1:50.
- (ii) Sections to be taken from the centre-line of the roadway through to the parking area itself and shall include all changes of grade both existing and proposed.
- (iii) The sections shall show all relevant levels and grades (both existing and proposed) including those levels stipulated as boundary levels.

- (iv) The sections shall show the calculated clearance to the underside of any overhead structure.
- (v) A longitudinal section along the gutter line showing how it is intended to blend the vehicular crossing into the existing kerb and gutter.
- (vi) All details of internal ramps between parking levels.

All details are to be certified by an appropriately qualified and practising civil engineer as complying with Australian Standard AS 2890, Parking Facilities and Council's standard specifications.

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

### **Boundary Level**

C16. The applicant shall design and construct having regard to the existing boundary property levels.

(Reason: Access and infrastructure protection)

### **Dilapidation Survey**

C17. A photographic survey of adjoining properties to the south detailing the physical condition of those properties, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to Council and the Principal Certifying Authority (where Council does not issue the Construction Certificate) prior to the issue of a Construction Certificate. This survey is to be prepared by an appropriately qualified independent person agreed to in writing by both the applicant and the owner of the adjoining property.

On completion of the excavation and building works and prior to occupation of the building, a certificate prepared by the person agreed to by the parties to the effect that no damage has resulted to adjoining premises, is to be provided to Council or the Principal Certifying Authority.

If damage is identified by the person agreed to by the parties which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to occupation of the development.

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

(Reason: Structural Safety)

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

C18. A report prepared by an appropriately qualified and practising structural engineer, detailing the structural adequacy of the property and its ability to withstand the proposed additional loads shall be submitted with the Construction Certificate.

(Reason: Structural Safety)

### **Damage to Adjoining Properties**

C19. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights must be observed at all times. Where damage occurs to adjoining property all necessary repair or suitable agreement for necessary repairs are to be undertaken by the applicant in consultation with and with the consent of the affected property owner prior to the occupation of the development or issue of a building certificate.

(Reason: Structural Safety)

### **Structural Stability**

C20. A detailed report prepared by an appropriately qualified and independent Structural Engineer, shall separately certify the structural stability of, and the means of support during construction of, all components to be retained and/or altered, having regard to the overall development proposed. This shall accompany the Construction Certificate Application.

(Reason: Heritage Conservation)

### **Asbestos Conditions**

C21. A survey of the existing building fabric shall be undertaken identifying the presence or otherwise of asbestos contamination. Any works subsequently required to address asbestos contamination shall be undertaken in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and the Work Safe Australia Asbestos Code of Practice and detailed in the Construction Certificate.

(Reason: Health and Safety)

### **Cycle Racks**

C22. An area equivalent to one car space shall be provided with cycle racks, such racks to be made available without charge to cyclists who work in the building. Such a facility is to be provided and detailed on plans prior to the issue of a Construction Certificate.

(Reason: Environmental, Amenity)

### **Cycle Shower Facilities (Commercial)**

C23. Shower facilities shall be provided and made accessible without charge to cyclists who work in the building. Details are to be provided with the Construction Certificate.

(Reason: Environmental, Amenity)

### **Disabled Parking**

C24. Car-parking spaces for disabled persons shall be provided as part of the total car-parking requirements. Consideration must be given to the means of access from the car-parking spaces to adjacent buildings, to other areas with the building and to footpath and roads and shall be clearly shown on the plans submitted with the Construction Certificate. All details shall be prepared in consideration of, and construction completed in accordance with Australian Standard AS2890.1 to achieve compliance with the Disability Discrimination Act 1995.

(Reason: Safety and convenience)

### **Line Marking**

C25. All off-street car-parking spaces, together with access driveways, shall be constructed, paved, line marked and signposted in accordance with the approved development plans, appropriate Australian Standards and industry best practice as appropriate. Design details prepared and certified by an appropriately qualified and practising civil engineer for the construction of these areas shall be submitted with the Construction Certificate.

(Reason: Safety, convenience, compliance with Australian Standards relating to manoeuvring and access of vehicles)

### **Reflectivity Index of Finishes**

C26. The reflectivity index (expressed as a percentum of the reflected light falling upon any surface) of external finishes, including painted surfaces, glazing, walls or roof treatment of the proposed development is to be no greater than 20%. Written confirmation of the reflectivity is to be submitted with the construction certificate.

(Reason: Amenity)

### **Service Ducts**

C27. Service ducts shall be provided to keep external walls free of plumbing or any other utility installations. Details are to be provided in the Construction Certificate.

(Reason: Visual Amenity)

**Section 94 Contributions**

C28. A monetary contribution pursuant to the provisions of Section 94 of the Environmental Planning and Assessment Act 1979, in accordance with the North Sydney Council Section 94 Contribution Plan for the public amenities/ services detailed in column A below and, for the amount detailed in column B below, less any amount already paid, must be paid to Council.

<b>A</b>	<b>B (\$)</b>
Administration	0
Child Care Facilities	0
Community Centres	<b>\$15,585.35</b>
Library Acquisition	<b>\$1,863.33</b>
Library Premises & Equipment	<b>\$6,416.52</b>
Multi-Purpose Indoor Sports Facility	0
Open Space Acquisition	<b>\$431,352.88</b>
Open Space Increased Capacity	<b>\$855,020.91</b>
Olympic Pool	0
Public Domain Improvements	0
Traffic Improvements	<b>\$45,811.91</b>
<b>The total contribution is</b>	<b>\$1,356,050.90</b>

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

The above amount and amount already paid 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 Section 94 Contribution Plan can be viewed at North Sydney Council’s Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council’s website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au)

(Reason: To 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 Bond Schedule**

C29. All fees and security bonds in accordance with the schedule below must be paid or in place prior to the lodgement of any application for the required Construction Certificate:-

<b>SECURITY BOND &amp; FEE SCHEDULE</b>	
61 LAVENDER STREET, MILSONS POINT	
<b>DEVELOPMENT APPLICATION NO. 112/01</b>	
<b>SECURITY BONDS</b>	<b>AMOUNT \$</b>
Footpath Damage Bond	20,000.00
Vehicular Crossing Bond	5,000.00
<b>TOTAL BONDS</b>	<b>\$25,000.00</b>
<b>FEES</b>	
Section 94 Contribution	<b>\$1,356,050.90</b>
<b>TOTAL FEES</b>	<b>\$1,356,050.90</b>

(Reason: Compliance with the development consent)

**Bonds**

C30. Council will accept a bank guarantee for the purpose of any security bond imposed by these conditions of consent. Such bank guarantee shall be in a form acceptable to the Council and shall be in place prior to the issue of Construction Certificate and shall remain in place until the submission of the compliance certificate required prior to the occupancy of the completed works.

**NOTE:** A summary of all security bonds, contributions and fees are appended at the end of this consent.

(Reason: Information, Protection of infrastructure and the environment)

**Construction Noise Management Plan**

C31. A Construction Noise Management Plan must be prepared by an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, and must include the following:

- (a) Identification of noise affected receivers near to the site.
- (b) A prediction as to the level of noise impact at noise affected receivers from the use and proposed number of high noise intrusive appliances intended to be operated onsite.
- (c) Details of work schedules for all construction phases;
- (d) A statement should also be submitted outlining whether or not predicted noise levels will comply with the noise criteria stated within the Environment Protection Authority’s Interim Construction Noise Guideline (“ICNG”).

- (e) Representative background noise levels should be submitted in accordance with the ICNG.
- (f) Confirmation of the level of community consultation that is to be undertaken by occupants at noise affected receivers likely to be most affected by site works and the operation of plant/machinery particularly during the demolition and excavation phases.
- (g) Confirmation of noise monitoring methodology that is to be undertaken during the noise intensive stages of work including details of monitoring to be undertaken at the boundary of any noise affected receiver.
- (h) What course of action will be undertaken following receipt of a complaint concerning offensive noise.
- (i) Details of any noise mitigation measures that have been outlined by an acoustic consultant or otherwise that will be deployed on site to reduce noise impacts on the occupants at noise affected receivers.
- (j) Details of selection criteria for any plant or equipment that is to be used on site, the level of sound mitigation measures to be undertaken in each case and the criteria adopted in their selection taking into account the likely noise impacts on occupants at noise affected receivers and other less intrusive technologies available; and
- (k) Details of site induction to be carried out for all employees and contractors undertaking work at the site.

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

“boundary” includes any window or elevated window of an affected residence.

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

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

### **Undergrounding of Power**

C32. The power supply to the building shall be provided by underground conduits from the mains to the primary supply box or room within the subject building. Any redundant power poles shall be removed. All works shall be completed to Energy Australia's requirements. Details to be provided with any application for Construction Certificate.

(Reason: To facilitate future undergrounding of power, streetscape)

### **Surrender of Consent**

C33. The applicant shall surrender consent DA459/05, issued 3 February 2006, proposing erection of two (2) illuminated building identification signs on north and south roof elevations of approved mixed-use building, currently under construction on land described as 61 Lavender Street, Milsons Point in accordance with the provisions of Section 97 of the Environmental Planning and Assessment Regulations, prior to the issue of any Construction Certificate.

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

### ***D. Conditions that must be complied with prior to any Demolition***

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

D1. Building materials shall not be placed on Council's footpaths, road ways, parks or grass verges and a suitable sign to this effect shall be erected adjacent to the street alignment.

(Reason: Safety and Access)

#### **Excavation/Demolition**

D2. No demolition or excavation shall be carried out until a Construction Certificate has been issued.

(Reason: Information/Statutory/Structural safety)

#### **Disposal Schedule**

D3. A disposal schedule for waste materials arising from demolition and excavation shall be submitted to Council, prior to commencement of demolition or building works, identifying:



- those materials to be recycled;
- those materials to be reused;
- those materials to be disposed of.

A maximum amount of materials shall be recycled or reused.

(Reason: Environmental Management Protection)

### **Inspection Fees**

D4. Where Council is acting as the Principal Certifying Authority and where an inspection of building, civil or landscape work is required by these conditions, inspection fees and component certification fees must be paid to Council before Council will undertake any inspections. These fees may be paid at the time of submission of the required Notice of Commencement of works (Form 7). This condition applies regardless of whether a Compliance Certificate fee is also payable.

**NOTE:** The submission of a 'Form 7' to Council is a statutory requirement prior to the commencement of any works on site.

(Reason: Compliance with Section 608 (6) of the Local Government Act 1993)

### ***E. Conditions that must be complied with during Demolition and Building Work***

#### **Progress Survey**

E1. In order to ensure compliance with approved plans, a Survey Certificate, to Australian Height Datum, shall be prepared by a registered surveyor as follows:-

- (a) at the completed height of the building, prior to the placement of concrete inform work, or the laying of roofing materials;
- (b) at completion, the relationship of the building, and any projections thereto, to the boundaries.

Progress certifications in response to points (a) through (c) shall be provided to the Council or the Principal Certifying Authority at the time of carrying out relevant progress inspections. Under no circumstances will work be allowed to proceed should such survey information be unavailable or reveal discrepancies between the approved plans and the proposed works.

(Reason: To ensure compliance with approved plans)

**Dust Emission and Air Quality**

- E2. (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. Odour suppression measures must be carried out so as to prevent nuisance occurring at adjoining properties.

(Reason: Safety and Amenity)

**No Work on Public Open Space**

- E4. No work can be undertaken within adjoining public lands (ie. 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**

- E5. The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(Reason: Protection of existing public infrastructure)

**No Removal of Trees on Public Property**

- E6. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved in its consent shall be removed or damaged during construction including the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure)

**Benchmarks**

- E7. All permanent survey markers shall be retained, undamaged, and not relocated.

(Reason: Statutory)

### **Soil Depth**

- E8. Planting beds over concrete slabs (basements, roofs, etc) shall provide a minimum depth of soil of 750 mm. Wherever possible, trees and shrubs are to be planted in unexcavated soil. A reduced planting depth of 500 mm is acceptable in areas proposed to be turfed.

(Reason: Maintenance of environmental amenity)

### **Construction Hours**

- E9. Building construction and works must be restricted to within the hours of 7.00 am to 5.00 pm Monday to Friday and on Saturday to within the hours of 8.00 am to 1.00 pm inclusive, with no work on Sundays and Public Holidays.

Demolition and excavation works must be restricted to within the hours of 8.00 am to 5.00 pm Monday to Friday only. For the purposes of this condition:

- a) “Building construction” means any physical activity on the site involved in the erection of a structure, cladding, external finish, formwork, fixture, fitting of service installation and the unloading of plant, machinery, materials or the like.
- b) “Demolition works” means any physical activity to tear down or break up a structure (or part thereof) or surface, or the like, and includes the loading of demolition waste and the unloading of plant or machinery.
- c) “Excavation work” means the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders, or the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site and includes the unloading of plant or machinery associated with excavation work.

All builders, excavators must display, on-site, their twenty-four (24) hour contact telephone number, which is to be clearly visible and legible from any public place adjoining the site.

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

### **Maintenance of Sediment Control**

- E10. Techniques used for erosion and sediment control on building sites are to be adequately maintained at all times and all techniques shall remain in proper operation until all development activities have been completed and the site fully stabilised.

(Reason: Protection of the Environment)

### **Erosion Signage**

- E11. A durable sign, which is available from Council, shall be erected during building works in a prominent location on site warning of penalties should appropriate erosion and sedimentation control devices not be maintained.

(Reason: Environmental Health)

### **Asbestos Conditions**

- E12. All asbestos must be removed by a licensed asbestos contractor in compliance with the Work Safe Australia Asbestos Code of Practice and guidance notes.

(Reason: Health and Safety)

### **Erosion and Sediment Control (Contaminated Land)**

- E13. Erosion and sediment control techniques are to be in accordance with North Sydney Council guidelines on Erosion and Sediment Control. All remediation works shall be conducted in accordance with an erosion and sediment control plan that follows the brochure “Preparing an Erosion and Sediment Control Plan”, published by the Department of Conservation and Land Management. The plan must be kept on-site and made available to Council officers on request (see also Council’s leaflet “Erosion and Sediment Control for Urban Development”).

Erosion and sediment control measures must be established prior to commencement of work. All erosion and sediment measures must be maintained in a functional condition throughout the remediation works.

Temporary stockpiles of contaminated materials must be kept in a secure area. Facilities must be installed for cleaning vehicles prior to leaving the site. Detailed designs for any pollution control system, including leachate collection and disposal, must be provided to the Council with notice of proposed work required under SEPP 55, Clause 16.

(Reason: Protection of the environment)

### **Compliance with Construction Noise Management Plan**

- E14. All works conducted on site which form part of this development must be carried out in accordance with the submitted Construction Noise Management Plan submitted with the Construction Certificate and all conditions of consent.

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

***F. Conditions Prescribed Under 80a(11) of EP&A Act 1979 and Clause 78 of EP&A Regulations 1998***

**Building Code of Australia**

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

(Reason: Prescribed - Statutory)

**Excavation/Demolition**

F2. (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.

(Reason: Prescribed - Statutory)

**Retaining Walls & Drainage**

F3. If the soil conditions require it:

(a) retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided, and

(b) adequate provision must be made for drainage.

(Reason: Prescribed - Statutory)

**Support for Neighbouring Buildings**

F4. (1) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:-

(a) must preserve and protect the building from damage, and

(b) if necessary, must underpin and support the building in an approved manner, and

(c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

- (2) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.
- (3) In this clause, allotment of land includes a public road and any other public place.

(Reason: Prescribed - Statutory)

### **Protection of Public Places**

- F5. (1) If the work involved in the erection or demolition of a building:-
- (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
  - (b) building involves the enclosure of a public place,
- a hoarding or fence must be erected between the work site and the 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.

(Reason: Prescribed - Statutory)

### **Site Sign**

- F6. (1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
- (a) stating that unauthorised entry to the work site is prohibited, and
  - (b) showing the name of the owner of the premises and of the person in charge of the work site, and a telephone number at which that person may be contacted outside working hours.
- (2) Any such sign is to be removed when the work has been completed.
  - (3) This clause does not apply to:

- (a) building work carried out inside an existing building, or
- (b) building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.

(Reason: Prescribed - Statutory)

### **Toilets**

- F7. (1) Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
- (2) Each toilet provided:
- (a) must be a standard flushing toilet, and
  - (b) must be connected:
    - (i) to a public sewer; or
    - (ii) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or
    - (iii) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.
- (3) The provision of toilet facilities in accordance with this clause must be completed before any other work is commenced.
- (4) In this clause:

**accredited sewage management facility** means a sewage management facility to which Division 4A of Part 3 of the Local Government (Approvals) Regulation 1993 applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in clause 95B of the Regulation.

**approved by the Council** means the subject of an approval in force under Division 1 of Part 3 of the Local Government (Approvals) Regulation 1993.

**public sewer** has the same meaning as it has in the Local Government (Approvals) Regulation 1993.

**sewage management facility** has the same meaning as it has in the Local

Government (Approvals) Regulation 1993.

(Reason: Prescribed - Statutory)

**Fire Safety**

F8. A building in respect of which there is a change of building use must comply with the Category 1 Fire Safety Provisions applicable to the proposed use.

(Reason: Prescribed - Statutory)

**Home Building Act**

F9. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) for which the *Home Building Act* 1989 requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:

a) in the case of work for which a principal contractor is required to be appointed:

- (i) the name and licence number of the principal contractor, and
- (ii) the name of the insurer by which the work is insured under Part 6 of that Act, or

(b) in the case of work to be done by an owner-builder:

- (i) the name of the owner-builder, and
- (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this conditions is out of date, work must cease and no further work may be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.



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

(Reason: Prescribed - Statutory)

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

F10. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifying Authority for the building work in accordance with the provisions of the EP&A Act and its Regulations.

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

**Construction Certificate**

F11. 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)

***G. Conditions which must be complied with prior to issue of Occupation Certificate***

**Public Access**

G1. A Covenant is to be created on Title in Council's favour to the benefit of the public and ensuring public access to the plaza and colonnade area for the purposes of access and resort and specifically prohibiting the further enclosure of this space or its use for any commercial purpose including the serving of meals and the like so as to restrict or inhibit its use by the public. The covenant is to be to the satisfaction of Council, prepared at the cost of the applicant and registered prior to occupation of the building or release of the Linen Plan of Strata Subdivision, whichever occurs first.

(Reason: Public Amenity and convenience)

### **Reinstatement**

- G2. All redundant lay-backs and vehicular crossings shall be reinstated to conventional kerb and gutter, foot-paving or grassed verge as appropriate. All costs shall be borne by the applicant, and works shall be completed prior to the issue of an Occupation Certificate.

(Reason: To facilitate vehicular access to private sites, without disruption to pedestrian and vehicular traffic, and the preservation of on street parking spaces)

### **Disabled Access**

- G3. Provision shall be made for wheelchair access to the non-residential components of the building on the site for disabled persons in accordance with AS 1428 Parts 1 and 4 prior to occupation. Particular attention should be given to tactile ground surface indicators for the orientation of people with vision impairment (AS 1428.4).

(Reason: Disabled Access)

### **Disabled Access from the Public Realm**

- G4. Tactile ground surface indicators complying with AS1428.4 shall be provided at the point of common public access to the building and at the vehicular access points to assist people with visual impairments in gaining access from the public way to the premises prior to occupation.

(Reason: Safety, Disabled Access)

### **Noise Impact of Plant**

- G5. All sound producing plant, equipment, machinery or fittings associated with or forming part of the mechanical ventilation system and/or the refrigeration system, shall be sound insulated and/or isolated so that the noise emitted does not exceed 5 dB(A) above the background level in any octave band from 63.0 Hz centre frequencies inclusive, at any time the plant is in operation, at the boundary of the site.

**Note:** The method of measurement of sound shall be carried out in accordance with Australian Standard 1055.1 - 1989.

A report prepared by an appropriately qualified or accredited person shall be submitted to the Council or to the Principal Certifying authority demonstrating compliance with this condition prior to the occupation of the completed works.

(Reason: Environmental Health)

### **Certification**

- G6. (a) An appropriate qualified person shall certify to the Principal Certifying Authority that the stormwater drainage system was constructed in accordance with the consent. The applicant shall, upon completion of the development works and prior to the final inspection/s, submit to Council a copy of the aforementioned letter of certification.
- (b) An appropriately qualified person shall certify to the Principal Certifying Authority that the vehicular crossing and associated works and road works were constructed in accordance with the consent. The applicant shall, upon completion of the development works and prior to the final inspection/s, submit to Council a copy of the aforementioned letter of certification.

(Reason: Compliance with the Consent)

### **Restrictive Covenant - shop top housing**

- G7. Prior to the use or occupation of the premises, a restrictive covenant pursuant to Section 88E of the Conveyancing Act, 1919 shall be created on the title of each of the five shop top housing allotments providing that the ground floor of each allotment, being the non-residential level, shall at all times be used exclusively for non-residential purposes (subject to obtaining development consent, where necessary). North Sydney Council and its successors shall be named as the sole authority empowered to release or modify the restrictive covenants.

(Reason: To provide certainty in relation to the ongoing use of the ground floor for non-residential purposes.)

### **Sydney Water**

- G8. The person acting upon this Consent shall submit to Council or Accredited Certifier a certificate from Sydney Water under Section 73 of the Sydney Water Act, 1994, demonstrating that the Authority's requirements, if any, in relation to this development have been met, prior to the release of the Occupation Certificate or plan of subdivision. Under no circumstances will Council or an Accredited Certifier release plans without the certificate.

An application form is available from Council or Sydney Water. Following application, a 'Notice of Requirements' will detail water and sewer extensions to be built and charges to be paid. Please contact Sydney Water early, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

(Reason: Statutory)

***H. Conditions that must be complied with Prior to Final Completion***

**Intercom**

- H1. An intercom system must be provided in a convenient location adjacent to the visitor parking entry to enable easier and safe access to visitor parking prior to final completion of the development.

(Reason: Convenience)

***I. On-going Conditions that must be complied with at all times***

**Loading & Unloading**

- I1. Deliveries to the building when complete should be via the loading dock &/or existing Right of Way and need to be coordinated with building management beforehand and a By-Law to this effect should be inserted into the Strata Scheme. Signage denoting the access for loading and unloading is also required.

(Reason: Traffic and convenience)

**Parking Station**

- I2. The off-street car parking area shall not be used as a Public Car Parking Station and spaces are for the use of permanent residents and commercial tenants of the building only and may not be sold, let or separately occupied.

(Reason: Statutory)

**Space Enclosure & Allocation**

- I3. (a) No parking spaces, or access thereto shall be constrained or enclosed without prior consent.  
(b) All off-street carparking spaces are to be allocated in the Strata Plan, with visitor spaces and disabled spaces created as common property.

(Reason: Compliance, Convenience)

**Loading Within Site**

- I4. All loading and unloading operations shall be carried out wholly within the confines of the site, at all times.

(Reason: Safety and Amenity)

### **Egress Signs**

- I5. Appropriate sign(s) shall be provided and maintained within the site at the point(s) of vehicular egress to compel all vehicles to stop before proceeding onto the public way.

(Reason: Safety)

### **Headroom**

- I6. A minimum headroom of 2.1m shall be provided over all car parking areas.

(Reason: Statutory)

### **ADVISINGS**

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **the undersigned**. However, if you wish to pursue your rights of appeal in the Land and Environmental Court pursuant to Section 97 of the Environmental Planning and Assessment Act 1979 (as amended), you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, instead of a full Court hearing, subject to any further advice to the contrary from Council's Solicitors and senior staff. Such an approach is less adversarial, it achieves a quicker decision than would be the case through a Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the Section 34 Conference approach requires the appellant to agree, in advance and in writing, that the Court appointed assessor will be given the full authority to completely determine the matter at the conference.
- (b) Pursuant to Section 96AB, an applicant is able to request Council to review its determination. An application for a review under Section 96AB of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.
- (c) Prior to commencing any building, subdivision or associated constructions works, the following provisions of the Environmental Planning and Assessment Act 1979 (the 'Act') are to be complied with:
- (i) A Construction Certificate is to be obtained in accordance with Section 81A(2) (a) of the Act.
  - (ii) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b1)(i) of the Act.
  - (iii) Council is to be notified at least two (2) days of the intention to commence building works, in accordance with Section 81A(2)(c) of the Act.

- (d) You are advised that changes to the external configuration of the building, changes to the site layout, density and unit configuration internal changes to the proposed building or any changes to the proposed operation of a use **MAY** require the submission of a further modification under Section 96 of the Environmental Planning & Assessment Act, 1979 (as amended).

Council staff would be pleased to assist in identifying such changes which may require the submission of a modification of a Development Application under Section 96 of the Environmental Planning & Assessment Act.

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DATE

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Signature on behalf of consent authority  
GEORGE YOUHANNA  
EXECUTIVE PLANNER