



**Land and Environment
Court**
of New South Wales

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Level 4 GPO Box 3565 SYDNEY NSW 2001
DX 264, Sydney

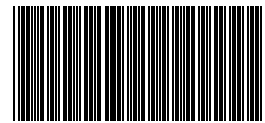
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Your Ref:



D00019BTH7

31 March 2020

NOTICE OF ORDERS MADE

Case number 2019/00082040
Case title Dartanyon Developments Pty Ltd v Kiama Municipal Council

On 31 March 2020 the following orders (and/or directions) were made:

The Court orders:

- (1) The Applicant is granted leave to rely on the amended plans and documents listed in condition General (1) to the conditions of consent and the written request under clause 4.6 of the Kiama Local Environmental Plan 2011 entitled "Written Request under Clause 4.6 Exceptions to Development Standards of Kiama Local Environmental Plan 2011" and dated 5 March 2020.
- (2) The Applicant is to pay the Respondent's costs thrown away for reviewing the amended plans received on 18 February 2020 and for reviewing the cl 4.6 variation requests dated February and March 2020 and for attendance at the hearing on 10 and 11 February 2020 (including travel on 9 February 2020), under s 8.15(3) of the Environmental Planning and Assessment Act 1979.
- (3) The Applicant's written request under clause 4.6 of the Kiama Local Environmental Plan 2011 dated 5 March 2020 for contravention of the height standards imposed by clauses 4.3 of the Kiama Local Environmental Plan 2011 is upheld.
- (4) The appeal is upheld.
- (5) Development application no. DA 10.2017.291.1 seeking development consent for demolition of existing motel and construction of a three storey shop top housing development with basement car parking, three commercial tenancies, five serviced apartments and twelve residential apartments and stratum/strata subdivision comprising three strata units at Lot 1 DP615423, 10 Bong Bong Street, Kiama is approved subject to the conditions contained at Annexure 'A'.

For the Registrar

Annexure 'A'

Dartanyon Developments Pty Ltd v Kiama Municipal Council**Conditions of Consent****10 Bong Bong Street Kiama****Development Description:** Demolition of existing motel, and

Construction of:

- a. A basement containing car parking area with forty eight (48) car parking spaces, one (1) loading bay, four (4) motorcycle spaces and seven (7) bicycle spaces and two (2) serviced apartments on the lower ground floor/basement; and
- b. Three (3) commercial tenancies and three (3) serviced apartments on the ground floor; and
- c. Twelve (12) residential apartments on the 2nd and 3rd storey; and

Stratum/strata Subdivision comprising three Stratum - Part 101 Commercial Lots Scheme, Part 102 Serviced Apartment Lots Scheme and Part 103 Residential Lots Scheme with:

- a. Part 101 Commercial Lots Scheme containing three (3) Lots Part Lot 1 to Part Lot 3;
- b. Part 102 Serviced Apartment Lots Scheme containing five (5) Lots Part Lot 1 to Part Lot 5;
- c. Part 103 Residential Lots Scheme containing twelve (12) Lots Part Lot 1 to Part Lot 12; and
- d. Common Property

Development Application Number: 10.2017.291.1**Premises:** LOT: 1 DP: 615423, 10 Bong Bong Street
KIAMA**CONDITIONS OF DEVELOPMENT CONSENT:**

(including Section 7.11 conditions)

General

- (1) The development shall be implemented in accordance with the details set out on the plan/drawing and supporting documents endorsed by Council as 10.2017.291.1 and listed in the table to this condition below except as amended by the following conditions.

Table of Approved Plans/drawings and supporting documents
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA100.1 – Amendment K dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA100.2 – Amendment E dated 27/02/2020

Table of Approved Plans/drawings and supporting documents
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA100.3 – Amendment H dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA100.4 to 100.5 – Amendment B dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA100.6 – Amendment S dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA100.7 – Amendment Q dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA100.8 Amendment P dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA100.9 – Amendment P dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA100.10 – Amendment P dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA100.11 – Amendment I dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA100.12 – Amendment O dated 25/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA100.13– Amendment O dated 25/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA100.14 Amendment L dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA100.15 – Amendment K dated 25/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA100.16 – Amendment I dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA200.1 – Amendment J dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA200.2 – Amendment J dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA200.3 – Amendment E dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA300.1 – Amendment H dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA300.2 – Amendment I dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA300.3 – Amendment I dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA300.4 – Amendment J dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA300.5 – Amendment I dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA400.1 – Amendment L dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA400.2 – Amendment J dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA400.3 – Amendment I dated 27/02/2020

Table of Approved Plans/drawings and supporting documents
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA500.1–Amendment I dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA500.2–Amendment I dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA500.3–Amendment H dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA500.4–Amendment J dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA500.5–Amendment D dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA500.6–Amendment D dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA500.7–Amendment H dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA500.8–Amendment D dated 17/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA500.9–Amendment D dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA500.10–Amendment H dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA500.11–12 Amendment D dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA500.13 Amendment H dated 27/02/20
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA500.14–500.29 Amendment D dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA500.30–Amendment F dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA500.31–Amendment J dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA600.1–Amendment F dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA600.2–Amendment K dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA600.3–Amendment I dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA700.1–Amendment J dated 27/02/2020
Architectural Plan prepared by DTA Architects, No: 18028, Dwg No. DA700.2–700.3 Amendment G dated 27/02/2020
Landscape Plan prepared by Distinctive Living Design, No: 09-18, Dwg No. 59-18.00 to 5918. 05 – Amendment F dated 18/02/2020
Drainage Concept Design Plans prepared by JMD Development Consultants, No: 17196E1, Sheet No. 1 to 6 – Issue B dated 17/02/2020
Strata Subdivision Plans prepared by JMD Development Consultants, No: 17196(APT)DA, Sheet No. 1 to 3 – Issue B dated 17/02/2020
Strata Subdivision Plans prepared by JMD Development Consultants, No: 17196(COMM)DA, Sheet No. 1 to 3 – Issue B dated 17/02/2020

Table of Approved Plans/drawings and supporting documents
Stratum Subdivision Plans prepared by JMD Development Consultants, No: 17196DP(OVERLAY), Sheet No. 1 to 3 – Issue B dated 17/02/2020
Strata Subdivision Plans prepared by JMD Development Consultants, No: 17196(RES)DA, Sheet No. 1 to 5 – Issue B dated 17/02/2020
Strata Subdivision Plans prepared by JMD Development Consultants, No: 17196DA, Sheet No. 1 to 3 – Issue B dated 17/02/2020
Traffic and Parking Impact Assessment Report prepared by ParkTransit Pty Ltd, dated 24 October 2019
Access Design Assessment Report prepared by Design Confidence, dated 31 October 2019, Ref P219_433-2 (ACCESS) YW
BCA Design Assessment Report prepared by Design Confidence, dated 29 October 2019, Ref P219_433-2 (BCA) LB
SEPP 65 Design Verification Statement prepared by DTA Architects dated 21 October 2019
BCA Section J Compliance Report prepared by Brad Hood of Thermal Performance dated 25/10/2019
Phase II Environmental Site Audit prepared by Envirotech dated 23 May 2019, Ref: REP-19-7796-A
Preliminary Geotechnical Investigation prepared by Envirotech dated 26 June 2019, Ref: REF-19-8200-A
Serviced Apartments Operational Management Plan prepared by Dartanyon Pty Ltd, dated 21 November 2019

- (2) The proposed future use of the commercial premises shall be the subject of a separate development application unless the use is retail/business. Food and Drink Premises are subject to separate development consent being sought and obtained prior their occupation of the commercial premises.
- (3) The development shall be completed in accordance with the approved colour schedule shown on the approved Finishes Board (Architectural Plan DA100.16, Rev I dated 27 February 2020).
- (4) The development shall not be occupied until such time as all conditions of this Development Consent are met or unless other satisfactory arrangements are made with the Principal Certifying Authority.
- (5) This approval is in respect of the plans submitted with the development application and as modified by the terms of this consent. If for any reason, including the making of alterations necessary to meet the requirements of another Authority, changes to the approved building design layout are proposed, then the approval of Council shall be obtained prior to commencement of any works on site.
- (6) Road Occupancy approval, pursuant to Section 138 of the Roads Act 1993 shall be obtained from Council prior to any proposed interruption to pedestrian and/or vehicular traffic within the road reserve caused by the construction of the development.

This shall include, but is not limited to the following activities:

- a. erect a structure or carry out work in, on or over a public road;
- b. dig up or disturb the surface of a public road;
- c. remove or interfere with a structure, work or tree on a public road;
- d. pump water into a public road from any land adjoining the road; or

- e. connect a road (whether public or private) to a classified road

The following items shall be submitted to Council with the Road Occupancy Application, a minimum of five days before approval is required:

- i. A completed application form;
 - ii. Fees in accordance with Council's adopted fees and charges;
 - iii. A traffic control plan endorsed by a person with Roads & Maritime Services accreditation. The traffic control plan shall satisfy the requirements of the latest versions of Australian Standard AS1742 – Traffic Control Devices for Works on Roads and the RTMS Traffic Control at Worksites Manual. This plan is required to maintain public safety, minimise disruption to pedestrian and vehicular traffic within this locality and to protect services, during demolition, excavation and construction phases of the development;
 - iv. Public liability insurance for an amount of no less than \$20M;
 - v. Where excavation will take place, a security bond in accordance with Council's adopted fees and charges; and
 - vi. Where road and footpath levels will be varied or the surface is altered, plans and specifications to Council's requirements (which will include, but not be limited to, compliance with relevant Australian Standards and the Building Code of Australia).
- (7) A suitably qualified person shall prepare a Construction Environmental Management Plan (CEMP) and shall be provided to the Principal Certifying Authority for their written approval prior to any works commencing on site.

The CEMP shall include, but not be limited to, the following items:

- i. what actions are proposed to ensure safe access to and from the site and what protection will be provided to the road and footpath area from building activities, crossings by heavy equipment, plant and materials delivery and static load from cranes, concrete pumps and the like,
- ii. the location of the storage of building materials, stockpiles, hording, equipment, machinery, site office etc, within the development site area,
- iii. the method and location points of loading and unloading excavation machines, building materials and formwork within the development site area,
- iv. the proposed areas within the site to be used for the storage of excavated material, construction materials and waste containers during the construction period, and
- v. the proposed method of support to any excavation adjacent to adjoining buildings or the road reserve. The proposed method of support is to be certified by an accredited certifier in Civil Engineering;
- vi. timing and duration of works;
- vii. location of work sites offices, compounds, stockpiles and refuelling areas;
- viii. location of environmentally sensitive areas;
- ix. description of the impacts associated with the construction activities and control measures;
- x. legislative requirements;
- xi. on-site staff structure and responsibility;

- xii. staff training, awareness and competency requirements;
- xiii. emergency planning and response;
- xiv. auditing and monitoring; and
- xv. the following supplementary plans:
 - a. Soil and Water Management Plan;
 - b. Contaminated Land Management Plan;
 - c. Acid Sulfate Soil Management Plan;
 - d. Noise and Vibration Management Plan;
 - e. Air Quality (Dust Control) Management Plan;
 - f. Waste Management Plan; and
 - g. Traffic Management Plan
 - h. Communication protocol including notification to neighbours identifying when construction is due to commence, and contact details including phone number, and sign placed in a visible part of the land containing those details.

The developer shall ensure that all construction work associated with the development is carried out in accordance with the approved Construction Environmental Management Plan (CEMP) and any variations are approved by the Principal Certifying Authority. A copy of the approved CEMP (and any variations) shall be forwarded to Council and a copy shall be kept on site at all times.

- (8) The development shall be undertaken in strict accordance with the recommendations of the following reports:
 - i. Traffic and Parking Impact Assessment Report prepared by ParkTransit Pty Ltd, dated 24 October 2019
 - ii. Access Design Assessment Report prepared by Design Confidence, dated 31 October 2019, Ref P219_433-2 (ACCESS) YW
 - iii. BCA Design Assessment Report prepared by Design Confidence, dated 29 October 2019, Ref P219_433-2 (BCA) LB
 - iv. SEPP 65 Design Verification Statement prepared by DTA Architects dated 21 October 2019
 - v. BCA Section J Compliance Report prepared by Brad Hood of Thermal Performance dated 25/10/2019
 - vi. Phase II Environmental Site Audit prepared by Envirotech dated 23 May 2019, Ref: REP-19-7796-A
 - vii. Preliminary Geotechnical Investigation prepared by Envirotech dated 26 June 2019, Ref: REF-19-8200-A
 - viii. Serviced Apartments Operational Management Plan prepared by Dartanyon Pty Ltd, dated 21 November 2019
- (9) A validation report incorporating a certificate of completion must be produced in accordance with the requirements of clause 17 & 18 of State Environmental Planning Policy No. 55. The certificate/report confirming that all decontamination and remediation works have been carried out in accordance with the remediation plan must be submitted to the Principal Certifying Authority within 30 days following completion of the works.
- (10) In accordance with the environmental maintenance objectives of 'Crime Prevention Through Environmental Design', the owner/lessee of the building shall be responsible

for the removal of any graffiti which appears on the buildings, fences, signs and other surfaces of the property within 48 hours of its application.

- (11) A Demolition & Construction Waste Management Plan is required to be prepared and submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.
- (12) No work (including demolition) is to take place until a Construction Certificate has been issued for the development and the relevant conditions of development consent are satisfied and complied with.
- (13) If the development cannot drain to a public street or natural watercourse, the developer at their own cost shall obtain an easement where necessary and carry out any necessary amplification or upgrading of the downstream drainage system, including the negotiation and dedication of appropriate easements, to ensure that the treatment standards of this development consent are complied with.
- (14) The cost of relocation or adjusting of levels of any public utilities shall be borne by the developer.
- (15) Any substation installed to service the proposal shall not be located within the road reserve and shall be screened from the public domain.
- (16) All electricity, telecommunications and natural gas services shall be located underground. Common or shared trenching and the document "*A Model Agreement for Local Councils and Utility/Service Providers*" prepared by the NSW Streets Opening Conference are policies adopted for the Kiama Municipal Council Local Government Area.
- (17) Car wash bays shall be connected to the Sydney Water Corporation's sewer and be subject to a licensed trade waste agreement with the Corporation.

Amendments to Approved Plans and Documents

- (1) Prior to the issue of any Construction Certificate for this consent by any Principal Certifying Authority the approved plans are to be amended to ensure that:
 - i. The existing overhead power lines along the frontage of the development site in Bong Bong Street are to be relocated underground for a distance extending from the existing electricity pole to the east of the development site to the existing electricity pole and pole mounted sub-station near the corner of Manning and Bong Bong Streets, and is required to be done to ensure that Endeavour Energy's overhead lines minimum clearances requirements with respect to the building structure proposed are not breached to ensure the safety of residents and people occupying the proposed development is not considered to be at risk.

Plans satisfying the requirements of this condition are to be prepared to the standard required of Endeavour Energy and submitted to the Council.

 - ii. To ensure that reasonable privacy is maintained for residents in units at 64 Manning Street, the external stairs proposed from the swimming pool to the proposed communal open space area to the west of the pool are to be screened to prevent overlooking into the adjoining residential units at 64 Manning Street, Kiama.
 - iii. Design plans, specifications and certification are to be provided demonstrating that access to the swimming pool is amended to comply with equitable access standards to ensure that the access to the pool is equitable and complies with the accessibility provisions of the National Construction Code –BCA, AS1428.1-2009, and the requirements of The Disability Discrimination Act (DDA) 1992.
 - iv. Design plans, specifications and certification that sufficient space has been provided and nominated within the kitchen (or an alternate location) in each unit

for the interim storage of bins or containers as supplied for source separated garbage, recyclables and food organics as specified in Chapter 11 – Kiama Development Control Plan 2012 – Waste Requirements Section 6 Internal Bins/Containers (Source Separation) (Design Controls C2, and C3).

- v. Design plans, specifications and certification that the garbage, recycling bin storage rooms (for the resident and commercial components of the development) and the on-site collection bin collection points have been designed to comply with development standards as specified in Chapter 11 – Kiama Development Control Plan 2012 – Waste Requirements Section 5 Garbage, Recycling Bin Storage Rooms Point (Design Controls C1, and C8) and Section 8 On-site Bin Collection Point (Design Controls C7, and C8) and Section 15 Development with Two or More Land Uses (Design Control C30).
- vi. A geotechnical assessment report including soil sampling, testing and analysis results undertaken in accordance with the NSW EPA Waste Classification Guidelines 2014 for all excavated material that will be transported from the development site. The report shall include soil waste classification certificates for the different types of soils or wastes identified on site. Details all lawful disposal sites for each classification of soil shall also be provided. Reference should be made to NSW EPA Waste Classification Guidelines (chemical assessment and testing requirement) Protection of Environment Operations Act 1997 <http://www.epa.nsw.gov.au/your-environment/waste/classifying-waste>.
- vii. Roof top planting of a hedge style species to be maintained at a minimum height of 800mm above the top of the planter.

Plans satisfying the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate for this consent, and are to be installed/constructed and must have a compliance certificate issued for completion of the works required by this condition prior to the issue of any Occupation Certificate.

- (2) Close Circuit Television is to be installed, and relayed to video recording device in the development, designed to monitor the:
 - i. External entry from Bong Bong Street to Lobby 01, 02, 03 and Commercial Lobby
 - ii. External entry from Bong Bong Street to Basement via ramp
 - iii. External entry from Coronation Park to Basement and Commercial Lobby
 - iv. External entry from the Communal Open Space area to the basement car park
 - v. External entry from Bong Bong Street to Lobby 01, 02, 03 and Commercial Lobby
 - vi. Internal entry from basement car park to Stair 01, 02, 03 and the Lifts 01, 02, 03, and Commercial Lift

Plans satisfying the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate for this consent, and are to be installed/constructed and must have a compliance certificate issued for completion of the works required by this condition prior to the issue of any Occupation Certificate.

- (3) Appropriate lighting, to the applicable Australian Standard, shall be designed and installed throughout the proposed development, including communal areas, external pathways through the development and the basement car park.

Plans satisfying the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction

Certificate for this consent, and are to be installed/constructed and must have a compliance certificate issued for completion of the works required by this condition prior to the issue of any Occupation Certificate.

- (4) Access Control - All pedestrian and vehicle entries must have key / swipe card access, and have an intercom relay to each apartment in the development to control access to the development by visitors including the:
- i. External building entry from Bong Bong Street to Lobby 01, 02, 03 and Commercial Lobby, and
 - ii. External building entry from Bong Bong Street to Basement via the vehicular entry ramp, and
 - iii. External building entry from Coronation Park to Basement and Commercial Lobby
 - iv. External building entry from the Communal Open Space area to the basement car park
 - v. Internal building entry from basement car park to the Lifts 01, 02, 03, and Commercial Lift
 - vi. Internal access control screen in the basement between the residential parking area and the visitor and commercial parking area.

Plans satisfying the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate for this consent, and are to be installed/constructed and must have a compliance certificate issued for completion of the works required by this condition prior to the issue of any Occupation Certificate.

- (5) Roller Shutters are to be installed within the carpark to control access between service areas, commercial car park areas and residential car park areas.

Plans satisfying the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate for this consent, and are to be installed/constructed and must have a compliance certificate issued for completion of the works required by this condition prior to the issue of any Occupation Certificate.

- (6) A security intercom system must be installed in each apartment.

Plans satisfying the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate for this consent, and are to be installed/constructed and must have a compliance certificate issued for completion of the works required by this condition prior to the issue of any Occupation Certificate.

Bonds and Contributions

- (1) A contribution pursuant to Section 94 of the Environmental Planning and Assessment Act 1979 (as amended) and Kiama Council's Section 94 Contributions Plans Nos. 1 & 2 shall be paid to Council prior to the issuing of the Construction Certificate. The total contribution required for the development is **\$83,656.89**

Prior to Commencement of Works

- (1) Building work must not commence until the Principal Certifying Authority for the development to which the work relates has been informed of:

- i The licensee's name and contractor licence number;
- ii That the licensee has complied with Part 6 of the Home Building Act 1989.

In the case of work to be done by any other person, the Principal Certifying Authority:

- a. Has been informed in writing of the person's name and owner builder permit number;

or

- b. Has been given a declaration, signed by the owner/s of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of the Home Building Act 1989.

- (2) The developer shall lodge with Council a bond of **\$20,000.00** in the form of an unconditional bank guarantee or cash, prior to the commencement of any work, as a security for new and remedial work associated with the development proposal and covering all work within the public roads administered by Council under the Roads Act 1993 and compliance with the submitted Waste Management Plan during the course of construction.

The developer shall submit a dilapidation survey prior to commencement of any work within the road reserve.

The bond shall be refunded in full subject to the following:

- a. There being no damage to the infrastructure within the road reserve.
 - b. There being no damage to the works undertaken in the road reserve, as a result of poor workmanship and/or inferior materials being used, and if so, rectification works are undertaken in accordance with the requirements of Council;
 - c. Twelve (12) months has elapsed from the date of issue of the occupation certificate and/or subdivision certificate.
 - d. The submission and approval by Council of a waste compliance certificate, inclusive of supporting documentation (dockets/receipts) verifying compliance with the Waste Management Plan as provided to Council.
- (3) The applicant must provide, to Council, the appropriate fee for the inspections required for the construction of the footpath crossing/access driveway in accordance with Council's adopted fees and charges. This inspection fee must be paid prior to the commencement of works within the road reserve area.

Work undertaken within the road reserve may only be undertaken by a Council approved contractor. A list of approved contractors may be obtained from Council's Engineering and Works Department.

- (4) Under the provisions of the Act, work may not commence on the development until the following is carried out:
 - a. Detailed plans and specifications of the building must be endorsed with a Construction Certificate by Council or an Accredited Certifier; and
 - b. You **must** appoint a Principal Certifying Authority (can be either Council or an Accredited Certifier); and
 - c. You **must** notify the Council of the appointment; and
 - d. You **must** give at least two (2) days notice to Council of your intention to commence work.

You will find attached an application form for a Construction Certificate. Should you require Council to issue this Certificate you should complete this application and forward it, together with plans and specifications, to Council for approval.

You will find attached a form for the “*Notice of Commencement of Building Work and Appointment of Principal Certifying Authority*”, which you are required to submit to Council at the appropriate time and at least two (2) days prior to the commencement of work.

Should you appoint Council as the Principal Certifying Authority, relevant inspection fees will be required to be paid at the time of lodgement of this form.

- (5) The BASIX commitments shall be indicated on the plans to the satisfaction of Council or an Accredited Certifier prior to the release of the Construction Certificate.
- (6) The developer shall submit to the Principal Certifying Authority written consent from affected property owners prior to any work being undertaken on adjoining land.
- (7) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - a. Showing the name, address and telephone number of the Principal Certifying Authority for the work;
 - b. Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
 - c. Stating that unauthorised entry to the work site is prohibited.

Note: Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed. The sign will be provided by the nominated Principal Certifying Authority for the relevant fee.

- (8) No building work is to commence until details prepared by a practising structural engineer have been submitted to and accepted by the Principal Certifying Authority for any reinforced concrete slabs, footings or structural steel.
- (9) The applicant shall submit engineer’s details of the foundation based on geotechnical advice prepared by a suitably qualified geotechnical engineer. Such detail/advice is to be provided prior to the issue of a Construction Certificate.
- (10) A detailed dilapidation report prepared by a suitably qualified structural engineer for all structures located on adjoining lands of the proposed development site supported with suitable photographic records shall be submitted to the accredited certifying authority prior to the commencement of work.
- (11) Prior to the issue of a Construction Certificate, a lighting strategy is to be developed and submitted to the Principal Certifying Authority. The strategy must be developed to enhance a safe environment and encourage passive surveillance. In this regard, the following objectives must be addressed within the strategy:
 - a. lighting of all entrances/exits of buildings, car parks, access routes and pathways to encourage safety and passive surveillance
 - b. lighting type and distribution to be provided throughout the site to eliminate any dark shadows and concealment areas particularly in the car park and stairwells, and
 - c. access control to and from the buildings as well as individual self-contained dwellings.

All external and internal lighting for internal roads, parking and service areas shall be provided in accordance with the Australian Standard 1158. At no time shall the lighting exceed the limits of the Australian Standard 4282-1997 Control of the Obtrusive effects of outdoor lighting.

- (12) An Energy Efficiency Report prepared by a suitably qualified and experienced person/architect in Energy Efficiency must be submitted to the Principal Certifying Authority prior to issue of a Construction Certificate. The Energy Efficiency Report must verify that the building has been designed in accordance with Section J (Energy Efficiency) of the Building Code of Australia.

Prior to the issue of the Construction Certificate, details must be provided to the Certifying Authority demonstrating how this will be complied with.

- (13) The wall separating each sole-occupancy unit must be constructed of material that achieves a weighted sound reduction index in accordance with Part F5 of the Building Code of Australia.

The floor separating each sole-occupancy unit must be constructed of material that achieves a weighted sound reduction index in accordance with Part F5 of the Building Code of Australia.

Prior to the issue of the Construction Certificate, details must be provided to the Certifying Authority demonstrating how this will be complied with.

- (16) Prior to Council or an accredited certifier issuing a construction certificate, the applicant shall obtain a letter from both the relevant electricity authority and the relevant telecommunications authority stating that satisfactory arrangements have been made to service the proposed development.

Note: The applicant should also contact the relevant water servicing authority to determine whether the development will affect the authorities water or sewer infrastructure.

- (17) Prior to Council or an accredited certifier issuing a construction certificate, the applicant shall prepare and obtain approval from an accredited person, a Traffic Control Plan (TCP) in accordance with the State Roads Authority manual "Traffic Control at Work Sites" and Australian Standard AS 1742.3 (as amended). A copy of the approved TCP shall be kept on site for the duration of the works in accordance with Work Cover Authority requirements. A copy shall be submitted to Council for its records.

- (18) A construction certificate shall not be issued for the subject building until the qualified designer who prepared the 'Design Verification Statement' submitted with the development application, prepares a separate written 'Architectural Finishes Validation Statement'.

The 'Architectural Finishes Validation Statement' shall confirm that the plans relied upon for issue of the construction certificate are not inconsistent with the approved plans described in Conditions 1 and 2 with specific regard to the architectural design elements, colours, finishes and treatments that are provided to the building's exterior.

Where circumstances require, another qualified designer may prepare the written confirmation, subject to receipt of written approval for such a change from Council's Director Planning and Environment.

- (19) Prior to the issue of any Construction Certificate, the accredited Certifying Authority shall obtain confirmation from a qualified civil engineer that the following requirements have been met:

- a. Car parking spaces, parking aisles, blind aisles, access driveways, circulation roadways and ramps comply with the requirements of the following Australian Standards:
 - i. AS 2890.1 - 2004 Off-street car parking;
 - ii. AS 2890.2 - 2002 Off-street commercial vehicle facilities;
 - iii. AS2890.3 - 2015 Bicycle Parking; and
 - iv. AS 2890.6 - 2009 Off-street parking for people with disabilities.
 - b. The car parking area shall be line marked and signposted in compliance with the requirements of the Australian Standards AS 1742.2, AS 1743, AS 1744, AS1906.1, AS 1906.2, AS 1906.3 and AS 4049.1.
 - c. Access and manoeuvring into the proposed delivery areas for all commercial vehicles shall comply with Australian Standard AS 2890.2 - 2002 Off-street commercial vehicle facilities.
- (21) Prior to the issue of any Construction Certificate, the accredited Certifying Authority shall ensure that the approved plans include a detailed stormwater drainage network designed in accordance with the requirements of “Section D5 Stormwater Drainage” of Kiama Development Code as appended to Kiama Development Control Plan 2012.
- (22) Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that the approved stormwater plans provide for an on-site detention storage for stormwater runoff in conjunction with the proposed development drainage network.
- The on-site detention system shall be designed to ensure that post development flow rates from the site are no greater than pre-developed site runoff at each discharge point for all rainfall events up to 1% Annual Exceedance Probability.
- The applicant shall provide full hydrological and hydraulic computer modelling of the stormwater drainage system to the Certifying Authority for approval prior to the issue of any Construction Certificate.
- (23) Prior to the issue of any Construction Certificate, the accredited Certifying Authority shall ensure that the approved stormwater plans comply with the design requirements of the “Kiama Municipal Council Water Sensitive Urban Design Policy”.
- (24) Prior to the issue of any Construction Certificate, the accredited Certifying Authority shall ensure that the approved stormwater plans provide for overflow paths to allow for flows of water in excess of the capacity of the pipe drainage system draining the land, as well as from any detention storage on the land.
- Blocked pipe situations with 1 in 100 year ARI events must be incorporated in the design. Overflow paths must also be provided in low points and depressions.
- (25) Prior to the issue of any Construction Certificate, the accredited Certifying Authority shall ensure that the design of the development causes no adverse effects to adjoining properties as a result of stormwater run-off.
- (26) Prior to the issue of any Construction Certificate, the accredited Certifying Authority shall ensure that allowance is made for surface run-off from adjoining properties. Any redirection or treatment of that run-off must not adversely affect any other adjoining
- (27) Prior to the issue of any Construction Certificate, the accredited Certifying Authority shall ensure that the stormwater drainage design has been issued with written endorsement from a qualified civil engineer which confirms that the constructed stormwater drainage system and water quality system meets with all stormwater requirements conditioned within this consent.
- (28) Before the commencement of any stripping or demolition, all parts of the site shall be examined, by competent specialists, to determine as far as it is practicable, the

presence of noxious, toxic or explosive materials or conditions, which would be hazardous to the health of the public if disturbed by stripping or demolition.

- (29) Prior to commencement of work the developer shall provide hoarding around the site where it adjoins a public road and man-proof fencing around the remainder of the site.
- (30) All stormwater kerb and gutter connections to have a minimum of 40 millimetres cover of concrete finishing flush with the top of the existing kerb. Pipe size to achieve this should be 90 millimetres in diameter.
- (31) The developer shall provide stormwater outlets to kerb lines converting to 90 millimetre diameter uPVC for barrier kerbs and 127 x 64 x 4 millimetre steel rectangular hollow section hot dip galvanised or aluminium for roll kerb sections.
- (32) Surface water which is likely to discharge from the development site onto the road reserve shall be intercepted at the property boundary and conveyed to the kerb via a pipe outlet.
- (33) Prior to the lodgement of any Construction Certificate, the accredited Certifying Authority shall ensure design plans and specifications are submitted to the satisfaction of the Council for the bin storage areas and included on the Construction Certificate plans for the approved development ensuring that:
 - i. the bin storage areas will accommodate the minimum number of bins required of:
 - Residential - 11 x 240L garbage bins, 2 x 240L organics bins and 19 x 240L recycling bins at any one time
 - Commercial – at a minimum 1 x 240L garbage bins and 1 x 1100L recycling bins at any one time
 - ii. the bin storage areas will be constructed in accordance with the requirements of the National Construction Code, Building Code of Australia and all relevant Australian Standards mobility and applicable legislation as amended including design requirements for access and mobility and gradients for ramps and pathways
 - iii. the bin storage areas will be provided with natural ventilation, mechanical ventilation or air conditioning complying with the National Construction Code, Building Code of Australia and all relevant Australian Standards
 - iv. the bin storage areas will be designed to minimise noise generated from the bins being moved in and out of the room, or from any compaction or other equipment located therein
 - v. the bin storage areas will have the floor constructed and finished to a smooth even surface, coved at the intersection with walls and plinths
 - vi. the bin storage areas will have the floor drained to a sump that is connected to Sydney Water Corporation sewage system and complies with any applicable plumbing codes, legislation and license requirements
 - vii. the bin storage areas will be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock for bin washing purposes
 - viii. the bin storage areas will have walls constructed of solid impervious materials, cement rendered internally to a smooth even surface coved at all intersections and must be finished in a light colour
 - ix. the bin storage areas will have the ceiling constructed of solid impervious materials with a smooth even and light colour finish and capable of being easily cleaned
 - x. the bin storage areas will have a close fitting and self-closing door.
 - xi. the bin storage areas will be provided with artificial light controlled by switches located both outside and inside the storage room.

Demolition Works

- (1) Throughout the demolition operations, adequate safety shall be maintained in public places adjoining the site. Safety of the public shall be maintained by providing street closures, hoardings, scaffolding and other types of overhead protection, either singularly or in combination, in accordance with the requirements of Council and AS 2601.
- (2) Security fencing shall be provided around the perimeter of the demolition site and any additional precautionary measures taken, as may be necessary to prevent unauthorised entry to the site at all times during the demolition period.
- (3) **Asbestos – Statement Required**

No later than seven days prior to the demolition of any building or structure, a written statement must be provided to Council indicating whether the building or structure contains asbestos or material containing asbestos and, if so, the following must also be provided:

- a. A hazardous substances audit report prepared by a competent and appropriately qualified person in compliance with AS2601-1991; and
- b. A hazardous substances management plan prepared by a competent and appropriately qualified person in compliance with AS2601-1991.

Asbestos – Licensed Contractors

Demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Demolition Licence or a current WorkCover Class 2 (Restricted) Asbestos Licence.

Asbestos – Notification of Neighbours

Fourteen days prior to the commencement of any demolition works involving asbestos, all immediate neighbours should be notified in writing of the intention to carry out asbestos demolition works. Copies of these written notifications should be retained and provided to Council.

Asbestos – Tip receipts

Documentary evidence in the form of tip receipts from an approved Waste Management Facility shall be obtained demonstrating the appropriate disposal of the asbestos waste. Tip receipts shall be provided to Council prior to any further building works being undertaken on the site.

Asbestos – Clearance Certificate

Following the removal of all friable asbestos and prior to further works being carried out on the site, a clearance certificate from an independent competent person in accordance with the National Occupational Health and Safety Commission Code of Practice for the Safe Removal of Asbestos is to be obtained and submitted to Council.

Asbestos – Less than 10m² of Bonded Asbestos Sheeting

Demolition works involving the removal of less than 10m² of bonded asbestos sheeting may be carried out by a licensed builder who has completed an appropriate bonded asbestos removal course.

Completion of demolition works

Council will monitor and review the demolition of the structure to ensure all conditions of consent application to the removal of asbestos has been satisfied.

- (4) Safe access to and egress from adjoining buildings shall be maintained at all times for the duration of the demolition work.

- (5) The techniques adopted for stripping out and for demolition shall minimise the release of dust into the atmosphere.
- (6) Removal of dangerous or hazardous materials shall be carried out in accordance with the provisions of all applicable legislation and with any relevant recommendations published by the WorkCover Authority.
- (7) Removal of asbestos, or of materials containing asbestos fibres, shall be in accordance with the WorkCover Authority code of practice. Disposal of asbestos materials shall be at premises certified to receive asbestos.
- (8) Where the demolition site adjoins a public thoroughfare, the common boundary between them shall be fenced for its full length with a hoarding unless the least horizontal distance between the common boundary and the nearest parts of the structure is greater than twice the height of the structure. The hoarding shall be constructed of solid materials to a height of not less than 2.4 metres above the level of the thoroughfare at its junction with the hoarding.

Notices lettered in accordance with AS 1319 and displaying the words "DANGER! DEMOLITION IN PROGRESS", or a similar message, shall be fixed to the fencing at appropriate places to warn the public.

Civil Engineering Design

- (1) The developer shall submit details of all civil engineering works on engineering drawings to the Certifying Authority for approval prior to the issue of the construction certificate.

The drawings shall include, but shall not be limited to, the following detailed information:

- a. The hydrologic modelling and hydraulic treatment detail including detailed calculations, drainage network layout, environmental controls (including the post-development first flush mechanism, water quality and sedimentation controls), all stormwater drainage structures and, where required, the proposed method of accessing the existing public stormwater drainage system. All drainage calculations are to be carried out in accordance with *Australian Rainfall and Runoff* published by Engineers Australia, and are to include a contoured catchment diagram and delineation of flow paths for storms of 1% Average Exceedance Probability (AEP);
- b. Plan, longitudinal and cross sectional detail shall be provided for the proposed circulation roadway, circulation aisle, ramps, car parking aisles and car parking modules;
- c. The proposed pavement treatment to the proposed circulation roadway, circulation aisle, ramps, car parking aisles and car parking modules. The minimum surface treatment shall be cement concrete;
- d. The location and reduced level of all services under the control of public utilities or agencies;

All reduced levels shall relate to Australian Height Datum (AHD).

Access Construction

- (1) The developer shall construct the footpath access driveway in compliance with the Standards Australia publication AS/NZS 2890.1 Parking Facilities Part 1: Off Street Car Parking and Council's *"Driveway and Footpath Works Procedure Manual"*.
- (2) The developer shall restore any redundant vehicle crossing to barrier kerb in compliance with Council's *"Driveway and Footpath Works Procedure Manual"*.

- (3) The applicant must provide, to Council, the appropriate fee for the inspections required for the construction of the footpath crossing/access driveway in accordance with Council's adopted fees and charges. This inspection fee must be paid prior to the commencement of works within the road reserve area. Work undertaken within the road reserve may only be undertaken by a Council approved contractor. A list of approved contractors may be obtained from Council's Engineering and Works Department.

Car Parking and Vehicular Access

- (1) Car parking shall be provided for forty-eight (48) vehicles in conjunction with the proposed development as indicated on the approved plans shall be available for car parking at all times.

Of this number thirty-five (35) car parking spaces shall be reserved at all times for the exclusive use of residents and resident visitor parking only, four (4) for motorcycles, five (5) for the serviced apartments, and ten (10) for the commercial/retail tenancy.

Vehicle car parking spaces provided for the development cannot be sold off to third parties that are not part of the development.

- (2) The car parking and manoeuvring area shall be line marked and signposted in compliance with the requirements of the Australian Standards AS 1742.2, AS 1743, AS 1744, AS/NZS 1906.1, AS 1906.2, AS 1906.3 and AS 4049.1.
- (3) Car parking and manoeuvring shall comply with the requirements of the Standards Australia publication AS/NZS 2890.1 Parking Facilities Part 1: Off Street Car Parking.
(c035.doc)
- (4) All vehicles being loaded and/or unloaded shall stand within the curtilage of the development site.
- (5) The visitor car parking spaces must be suitably signposted and always be available for visitor parking. These spaces must not at any time be allocated, sold or leased to an individual owner/occupier.

Utility Servicing

- (1) A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The Section 73 Certificate shall be submitted to Principal Certifying Authority prior to issue of the Final Occupation Certificate.
- (2) The wash bay shall be connected to the Sydney Water Corporation's sewer and be subject to a licensed trade waste agreement with the Corporation.
- (3) All electricity, telecommunications and natural gas services shall be located underground. Common or shared trenching and the document "*A Model Agreement for Local Councils and Utility/Service Providers*" prepared by the NSW Streets Opening Conference are policies adopted for the Kiama Municipal Council Local Government Area.
- (4) The developer shall bear the cost of relocation of any service utilities required in the provision of vehicular access.

Geotechnical Requirements

- (1) There shall be no loss of support or encroachment of fill onto adjoining properties as a result of excavation or filling within the site.
- (2) All earthworks associated with the development shall be completed in accordance with AS 3798-2007 Guidelines on Earthworks for Commercial and Residential Developments. (gr075.doc)

Inspections

- (1) The building work shall be inspected at critical and other stages as required by the Principal Certifying Authority for the development.

NOTE: Should you choose Council to be your Principal Certifying Authority for this development you will be advised of the required building inspections and applicable fees at the time of that appointment.

Swimming Pool

- (2) All excavations shall be enclosed with a temporary fence during construction of the pool.
- (3) The fences, gates and latches for the swimming pool shall be provided and constructed in accordance with the provisions of Australian Standard 1926 - Fences and Gates for Private Swimming Pools.
- (4) The swimming pool shall not be filled with water until the permanent safety fence has been erected.
- (5) An instructional poster for resuscitation which bears the words "Young Children Should Be Supervised When Using This Swimming Pool", together with details of resuscitation techniques for adults, children and infants shall be located in a prominent position within the pool enclosure.

Building Construction

- (1) All building work must be carried out in accordance with the requirements of the Building Code of Australia.
- (2) The roadway, footpath or Council reserve shall not be used to store building material without the prior approval of Council.
- (3) All excavations and backfilling must be executed safely in accordance with appropriate professional standards.
- (4) All excavations must be properly guarded and protected to prevent them from being dangerous to life or property.
- (5) If an excavation 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 must:
 - a. Preserve and protect the building from damage;
 - b. Underpin and support the building in an approved manner, if necessary, and;
 - c. At least seven (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 to the owner of the proposed work.
- (6) The Reduced Levels (RL) of the proposed development must be in accordance with the approved plans. Certification of these levels by a registered surveyor must be submitted to an accredited certifier or Council prior to proceeding past that level.
- (7) A survey shall be undertaken and a copy be made available to Council or an accredited certifier, certifying that the building is correctly located in relation to the boundaries of the site and in accordance with the approved plans. Such survey shall be submitted at peg out stage.

- (8) Construction and demolition work, delivery of materials and plant, etc shall only take place between the following hours;

Monday to Friday	- 7.00 am to 6.00 pm
Saturdays	- 8.00 am to 1.00 pm

No construction work is to take place on Sundays or Public Holidays.

- (9) The Waste Management Plan shall be strictly adhered to at all stages during the demolition, construction and/or subdivision work. All waste nominated for disposal must be disposed of at a licensed landfill facility. All waste nominated for recycling must be reused or recycled.
- (10) All excavations and backfilling associated with the approved works must be executed safely and in accordance with appropriate professional standards. All excavations must be properly guarded and protected to prevent them from being dangerous to life or property.

If an excavation associated with the approved works 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 seven 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.

The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

- (11) Prior to the positioning of wall panels/ bricks or block work, the applicant shall submit to the principal certifying authority a qualified practicing surveyor's certificate showing the boundaries of the allotment, distances of walls and footings from the boundaries, and the dimensions of the building.
- (12) Prior to the placement of any concrete of the basement/ground floor slab, the applicant shall submit to the principal certifying authority a qualified practicing surveyor's certificate showing that the formwork levels are in accordance with the approved plan.
- (13) Upon completion of the building, the applicant shall submit to the Principal Certifying Authority a qualified practicing surveyor's certificate showing the boundaries of the allotment, distances of walls and footings from boundaries.

Soil and Water Management

- (1) All practical measures must be taken to ensure erosion and subsequent sediment movement off-site does not occur. In particular:
- a. A silt fence or equivalent must be provided downhill from the cut and fill area (or any other disturbed area). Such fence must be regularly inspected and cleaned

out and/or repaired as is necessary, and all collected silt must be disposed of in accordance with Council's Sedimentation Control Policy.

- b. Unnecessary disturbance of the site (eg; excessive vehicular access) must not occur.
 - c. All cuts and fills must be stabilised or revegetated as soon as possible after the completion of site earthworks.
 - d. All the above requirements must be in place for the duration of the construction works.
- (2) The developer shall submit to the Certifying Authority for approval prior to the issue of the construction certificate, a detailed Soil and Water Management Plan (SWMP) designed in accordance with the requirements of *Managing Urban Stormwater: Soils and Construction Volume 1* (Landcom 2004) and *Managing Urban Stormwater: Soils and Construction Volume 2* (Department of Environment and Climate Change 2007).

All works on the site must be in accordance with the approved SWMP for the full duration of construction works and must provide an overall site detail. For staged development a SWMP shall be provided for each stage of the development.

- (3) The developer shall ensure that sediment-laden runoff from the site is controlled at all times subsequent to commencement of construction works. Sediment control measures must be maintained at all times and checked for adequacy at the conclusion of each day's work.
- (4) The construction site supervisor shall ensure at all times that:
- Any material deposited on public roads resulting from the works is removed immediately;
 - The emission of dust from the site is controlled with adequate watering equipment being kept on the site at all times for this purpose; and
 - A shaker pad and a wash down area are installed at the exit point of the site to prevent material leaving the site on the wheels of vehicles, other plant and equipment.
 - The items in the approved soil and water management plan are installed and maintained.

Landscaping Works

- (1) A detailed landscape plan shall be approved by Council prior to release of the Construction Certificate. The plan shall be prepared in accordance with Chapter 8 of Kiama Development Control Plan 2012 and shall be consistent with Landscape Plan prepared by Distinctive Living Design, No: 09-18, Dwg No. 59-18.00 to 5918.05 – Amendment E dated 28/10/201.

The landscape plan shall be amended to show the pavers proposed for Bong Bong Street as Claypave Regal Tan.

The trees nominated for removal as detailed in the Arboricultural Assessment Report prepared by Scott Freeman of Horticultural Management Services dated 25 October 2017 shall be removed for the development. The trees to be removed are; three Norfolk Island Pines numbered 1, 2 & 15, ten bangalow palms numbered 3 -6 & 9 -14, one Frangipani tree number 7 and one Washingtonia palm number 8.

- (2) All landscape areas shown on the approved landscape plans or otherwise required under the conditions of this consent, shall be landscaped and maintained in accordance with the approved plans and conditions.

- (3) The landscaping shall be maintained actively and regularly for a period of 26 weeks commencing from the date of issue of the Occupation Certificate.
- (4) At the end of the 26 week landscape maintenance period and after any defects that occurred during that period have been corrected, a final Compliance Certificate shall be provided from a suitably qualified landscape professional stating that all landscape works have been completed and maintained in accordance with the approved landscape plans and the conditions of this development consent.
- (5) The landscape works shall remain in situ for the perpetuity of the development.
- (6) Prior to release of the Occupation Certificate the developer shall provide a Compliance Certificate from a suitably qualified landscape professional or Council's Landscape Officer stating that all landscape works have been completed in accordance with the approved landscape plans and the conditions of the development consent.
- (7) Prior to release of the Occupation Certificate all landscape works shall be completed in accordance with the Approved Landscape Plans and the Conditions of the Development Consent and approved by Council.
- (8) The footpath and access driveway within the frontage road, Bong Bong Street, and immediately adjoining the development site shall be prepared and paved using the paving bricks complying with Kiama Municipal Council's Kiama Town Centre Strategy and shall be constructed in compliance with the Kiama Development Code as appended to Kiama Development Control Plan 2012. The pavers are Claypave Regal Tan.

Earthworks

- (1) Clean fill imported onto the site shall be validated to ensure it is suitable for the proposed land use. All fill imported onto the site shall be validated by either one or both of the following methods during remediation works:
- (2) Documentation from the supplier which certifies that the material is not contaminated based upon analyses of the material for the known past history of the site where the material is obtained; and/or
- (3) Sampling and analysis of the fill material shall be conducted in accordance with NSW EPA (1995) Sampling Design Guidelines.
- (4) Any fill material that is imported onto the site must be analysed and classified by an appropriately qualified and experienced environmental consultant in accordance with relevant NSW EPA guidelines, including the "Waste Classification Guidelines" 2014.
- (5) To ensure that fill material is suitable for the proposal, only material classified as Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM) is permitted to be imported onsite.
- (6) Any waste-derived material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority or the Kiama Municipal Council upon request.

Classification of waste

- (7) Prior to the exportation of waste (including fill or soil) from the site, the waste materials must be tested and classified in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW EPA Waste.
- (8) Classification Guidelines, Part 1: Classification of Waste (November 2014). Testing is required prior to off -site disposal. In accordance with DECC Waste Classification Guidelines (2014) materials identified for off-site disposal must be removed by a suitably qualified contractor to an appropriately licensed waste facility.

Note: Attention is drawn to Part 4 of the NSW DECC Waste Classification Guidelines (2014) which makes particular reference to the management and disposal of Acid & Potential Acid Sulfate Soils.

The classification of the material is essential to determine where the waste may be legally taken.

The Protection of the Environment Operations Act 1997 provides for the commission of an offence for both the waste owner and the transporters if the waste is taken to a place that cannot lawfully be used as a waste facility for the particular class of waste.

For the transport and disposal of industrial, hazardous or Group A liquid waste advice should be sought from the EPA.

Evidence that the requirements specified above have been satisfied must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

Where an Occupation Certificate is not required this evidence must be provided to the satisfaction of Council's Waste Management Officer.

Vegetation Management and Tree Protection

During construction

- (3) No machinery, builder's material and/ or waste shall be located within the Tree Protection Zone of any tree retained adjoining the site or under the Norfolk Island Pines in the road reserve of Bong Bong Street.
- (4) During construction any branches of the trees on the adjoining properties that need pruning for clearance of scaffolding or building that overhang the boundary shall be removed with the approval and supervision of the Project Arborist after consultation with the tree's owners.
- (6) Gutter guards appropriate to the foliage and fruit of the existing trees on adjoining properties should be installed in areas likely to be in the fruit/foliage fall area of the existing trees.
- (7) During construction any other matter arising that may harm the existing trees on adjoining properties shall be referred to the Project Arborist.
- (8) Prior to the release of the Occupation Certificate a Compliance Certificate from the Project Arborist shall be issued to the Principle Certifying Authority detailing the attendance on site and actions performed in accordance with the conditions of the development consent.

Site Facilities

- (1) If the erection or demolition of a building will cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the building and the public place.
 - i. If necessary, a sufficient awning is to be erected to prevent any substance from, or in connection with, the work falling onto the public place.
 - ii. The site of the building is to be kept lit between sunset and sunrise if it is likely to be a source of danger to persons using the public place.
 - iii. Any such hoarding, fence or awning is to be removed when no longer required.
 - iv. Any proposed hoarding/awning or fence shall be the subject of an application to Council.

- (2) An appropriate temporary toilet facility shall be provided on site, located inside the property boundaries, prior to commencement of works. The temporary toilet shall be maintained in a clean/sanitary condition at all times.
- (3) During construction the applicant shall provide, inside the property boundaries a suitable waste container for the disposal of all papers, plastics and other lightweight materials. (sf015.doc)
- (4) A sign must be erected in a prominent position on the premises on which the erection or demolition of a building is being carried out:
 - a. Stating that unauthorised entry to the premises is prohibited; and
 - b. Showing the name of the builder or other person in control of the worksite and a telephone number at which the builder or other person may be contacted outside working hours.

Any such sign is to be removed when the erection or demolition of the building has been completed.

On Site Management of Waste

- (1) Upon occupation of the development an onsite caretaker or nominated representative must be provided and delegated the responsibility for the tasks involved in ongoing site waste management, including:
 - moving bins to and from the bin storage room to the nominated collection point on collection day as specified by Kiama Municipal Council;
 - washing bins and maintaining all bin storage areas;
 - arranging for the prompt removal of dumped rubbish;
 - displaying and maintaining consistent signs on all bins and in all communal storage areas;
 - managing communal composting areas (if applicable);
 - ensuring all residents are informed of the garbage, recycling, organics and bulky waste arrangements.
- (2) As it is a shared bin arrangement, prior to tenancy, it will be the responsibility of the property developer to purchase the following number of bins prior to occupancy:
 - 11 x 240L red lid garbage bins
 - 19 x 240L yellow lid recycling bins
 - 2 x 240L green lid organics bins
- (3) Each lot owner will be charged the 140L Domestic Waste Management Charge.
- (4) Minimum 1 x 240L garbage and 1 x 1100L recycling bin for the commercial tenants.

Waste and Recycling collection

- (1) The collection of waste and recycling must only occur between 6.00am and 8.00pm weekdays and 9.00am and 5.00pm weekends and public holidays, to avoid noise disruption to the surrounding area.
- (2) Garbage and recycling must be placed on the kerbside for collection the night before the scheduled collection time. Bins and containers are to be removed from the kerbside same day of service and returned to the designated Bin Room.
- (3) The waste storage and bins must be adequate to contain the volume and type of garbage and recyclable matter on the premises. All garbage and recyclable matter must be enclosed in the waste bins with lids completely closed at all time.

- (4) An onsite caretaker or nominated representative of the body corporate must be provided at the site, and must be delegated the responsibility for the tasks for the implementation of the site waste management strategy for both the residential accommodation, serviced apartments, and the commercial components of the development, including:
- moving bins to and from the bin storage rooms to the nominated collection point on collection days as specified by waste collection contractors; and
 - washing bins and maintaining all bin storage rooms in a clean and sanitary condition to prevent odours, flies and other pests and vermin; and
 - ensuring that residents and occupants using individual or shared waste bins deposit the correct materials in the garbage, recycling and food organics bins; and
 - distributing educational information as provided by Council and to provide advice to new and existing residents and tenants how to correctly sort and use the garbage, recycling and food organics bins and service; and
 - removing any contamination or prohibited or non-compliant waste materials from any recycling and food organics bins prior to collection or if notified by the waste collection contractor or Council; and
 - arranging for the prompt removal and disposal of all dumped rubbish left beside bins or inside the bin storage rooms; and
 - providing, maintaining and displaying information signs in accordance with Councils waste requirement in the bin storage rooms.

Prior to Occupation

- (1) The completed Waste Management Compliance Sheet (Appendix 1C) shall be submitted to and approved by Council prior to release of the Final Occupation Certificate.

Supporting documentation (dockets/receipts) verifying recycling and disposal shall be attached to the Compliance Sheet.

- (2) The BASIX schedule of commitments shall be complied with prior to the issue of a Final Occupation Certificate for the development and if required a certificate shall be provided to the Principal Certifying Authority from a properly qualified person to certify that the BASIX schedule of commitments have been provided and/or installed.
- (3) The developer shall complete all civil engineering works required in this consent in the adjoining road reserve prior to the issue of any Occupation Certificate. Written advice from Council confirming such shall be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.
- (4) A Works-As-Executed (WAE) drawing for all associated stormwater drainage work shall be submitted to the Principal Certifying Authority prior to the release of any Occupation Certificate. The WAE drawing shall be prepared and signed by a Registered Surveyor and show in contrasting coloured ink all changes to the approved construction certificate drawings and all constructed levels. The WAE drawing shall be certified by a suitably qualified Civil Engineer (registered on the Engineers Australia - National Engineering Register) that "all work as completed, including variations, meets the original intent of the approved Construction Certificate drawings and will have not have an adverse impact on adjacent properties".
- (5) Prior to the issue of any Occupation Certificate, certification from a suitably qualified civil and/or structural engineer (registered on the Engineers Australia - National Engineering Register) shall be submitted to the Principal Certifying Authority confirming that the on-site detention tank has been constructed in accordance with the approved plans and specifications.
- (6) Prior to occupation, the following documents shall be submitted to the Certifying Authority;

- a. Written certification that:
 - i the waste bin storage rooms have been constructed in accordance with the approved design plans and specification and comply with development standards as specified in Chapter 11 – Kiama Development Control Plan 2012 – Waste Requirements Section 5 Garbage, Recycling Bin Storage Rooms Point (Design Controls C1, and C8).
 - ii space has been provided and nominated within the kitchen (or an alternate location) in each unit for the interim storage of bins or containers as supplied for source separated garbage, recyclables and food organics as specified in Chapter 11 – Kiama Development Control Plan 2012 – Waste Requirements Section 6 Internal Bins/Containers (Source Separation) (Design Controls C2, and C3).
 - (7) Prior to the Principal Certifying Authority issuing an Occupation Certificate, all external works, repairs and renovations detailed in the schedule of treatment/finishes, landscaping, driveways, fencing and retaining walls shall be completed to the satisfaction of the Principal Certifying Authority.
 - (8) An Occupation Certificate shall not be issued for the subject building until the qualified designer who prepared the 'Design Verification Statement' submitted with the development application, prepares a separate written 'End Architectural Finishes Validation Statement'.
- The 'End Architectural Finishes Validation Statement' shall confirm that the building's exterior has been constructed and completed in a manner that is not inconsistent with the approved plans and the plans relied upon for issue of the Construction Certificate, with specific regard to the architectural design elements, colours, finishes and treatments.
- Where circumstances require, another qualified designer may prepare the written 'End Architectural Finishes Validation Statement', subject to receipt of written approval for such a change from Council's Director Planning and Environment.
- (9) Prior to the Principal Certifying Authority issuing an Occupation Certificate the applicant shall ensure that all applicable Council fees and charges, associated with the development, have been paid in full.

During Construction

- (1) The developer shall ensure that all construction work associated with the development is carried out in accordance with the approved Construction Environmental Management Plan (CEMP) and any variations are approved by the Principal Certifying Authority. A copy of the approved CEMP shall be kept on site at all times.
- (2) Any material deposited on public roads resulting from the works must be removed within 3 hours.
- (3) The emission of dust from the site must be controlled and in this regard watering equipment shall be kept on the site at all times for this purpose.
- (4) A shaker pad is to be installed at the exit point of the site to prevent soil material leaving the site on the wheels of vehicles and other plant and equipment.

Prior to the Issue of an Occupation Certificate

- (1) Pursuant to the requirements of Section 149 of the Roads Act 1993, a lease shall be consented to by Council for any proposed structures overhanging the road reserve. Evidence of the lease shall be sighted by the Principal Certifying Authority prior to the issue of any Occupation Certificate.

- (2) A Works-As-Executed (WAE) drawing for all work undertaken shall be submitted to the Principal Certifying Authority prior to the release of any Occupation Certificate. The WAE drawing shall indicate in contrasting coloured ink all changes to the Construction Certificate approved plans and specifications. The WAE plans shall be signed by a Registered Surveyor and certified by a suitably qualified civil engineer stating that all the works as completed, including variations, meet the original intent of the Construction Certificate approved plans and specifications and will have no adverse impact on adjacent properties or on Council infrastructure.
- (3) Prior to the issue of any Occupation Certificate, the following items shall be provided in the adjoining road network to the satisfaction of Council
- i. Footpaths adjoining the development site are to be formalised with pavers or concrete paths (or any other material as approved by Council) at a grade of no more than 2.5% from the site boundary to the kerb line. All work shall be designed and constructed in accordance with Council's "*Driveway and Footpath Works Procedure Manual*";
 - ii. Any redundant vehicle crossing shall be restored to barrier kerb in compliance with Council's "*Driveway and Footpath Works Procedure Manual*";
 - iii. All footpath access driveways in compliance with Council's "*Driveway and Footpath Works Procedure Manual*";

The requirements listed above shall be shown on plans which demonstrate compliance with the requirements of the Roads Authority and/or Council. Approval shall be pursuant to the requirements of the Roads Act 1993. The approved construction work shall be completed to the satisfaction (in writing) of Council prior to the issue of any Occupation Certificate. The Principal Certifying Authority shall not issue any Occupation Certificate until this certification is provided to them.

- (4) Prior to the issue of any Occupation Certificate the developer shall create an instrument under Section 88B/88E of the Conveyancing Act 1919, for approval by Council, which incorporates the following easements and restrictions on the use of land:
- i. a positive covenant in favour of Council detailing protection measures and long term maintenance requirements for the on-site stormwater detention system. The document shall meet the standard terms applied by Council.
 - ii. Restriction as to user which stipulates that:
 - A. *Serviced Apartments on the land hereby burdened described as Unit B1.01, Unit B1.02, Unit G1.01, Unit G1.02 and Unit G1.03 on the approved plans shall not be used for residential accommodation, and can only be used for tourist accommodation and occupied by not more than 42 days in any calendar year by an individual or family.*
- (5) A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The Section 73 Certificate shall be submitted to Principal Certifying Authority prior to issue of any Occupation Certificate.
- (6) Prior to issue of any Occupation Certificate, each residential visitor spaces shall be clearly signposted with the wording that it is a visitor space.
- (7) Prior to issue of any Occupation Certificate, a dedicated car wash bay is to be provided as shown on the approved plans. The car wash bay shall be provided with a bund and/or open drain with grating all around, connected into the Sydney Water sewerage system, supplied with a cold water tap and power point and clearly signposted with the wording that it is a car wash bay and the space is no parking.

- (8) Prior to the issue of any Occupation Certificate, written endorsement from a qualified structural engineer shall be submitted to the Principal Certifying Authority confirming that the on-site detention tank has been constructed in accordance with the approved plans and specifications.
- (9) Prior to the issue of any Occupation Certificate, written endorsement from a qualified civil engineer confirming that the constructed stormwater drainage infrastructure meets with the approved design shall be provided to the Principal Certifying Authority.
- (10) Prior to issue of any Occupation Certificate, each car wash bay shall be clearly signposted with the wording that it is a car wash bay. Each carwash bay shall be supplied with its own individual cold-water tap and power point. A waste and recycling bin shall also be provided in close proximity to the carwash bays.
- (11) Prior to issue of any Occupation Certificate, each residential visitor parking space shall be clearly signposted with the wording that it is a visitor's space and time limits apply. The visitor's parking space shall not be made unavailable through the location of security systems (e.g. gates and roller doors).
- (12) Prior to issue of any Occupation Certificate, each residential parking space shall be clearly signposted with the apartment number.
- (13) Prior to issue of any Occupation Certificate each commercial parking space shall be clearly signposted.
- (14) Prior to the issue of any Occupation Certificate, the developer is to formally notify the owners of Unit 5/64 Manning Street, Kiama in writing of an option available to them (an offer which will only expire after 18 months following the issue of the Final Occupation Certificate) to have privacy screening placed on the rear balcony of their property at the developer's expense.

Prior to the issue of any Occupation Certificate adequate evidence of this notice being provided to the owners of 5/64 Manning Street is to be provided by the developer to Council.

Prior to the Issue of a Subdivision Certificate

- (1) The Subdivision Certificate shall not be released until all conditions of this Development Consent are complied with or satisfactory arrangements are made with the Principal Certifying Authority.
- (2) The developer shall acknowledge all existing easements on the final plan of subdivision
- (3) The developer shall acknowledge all existing restrictions on the use of the land on the final plan of subdivision.
- (4) The developer shall submit the following items to the Principal Certifying Authority prior to the issue of a Subdivision Certificate:
 - A Final Plan of Subdivision and three copies.
 - An original Subdivider/Developer Compliance Certificate (Section 73 Certificate) from Sydney Water Corporation which references the relevant development application number.
- 5) All car parking spaces (except visitor parking) shall be allocated to units or shops on the final plan of subdivision. The allocation shall be in accordance with Kiama Development Control Plan 2012. Visitor spaces shall be shown on the final plan.
- 6) In accordance with AS/NZS 4819:2011 Rural and Urban Addressing, standard Strata Title addressing applies. Communal letterboxes to be located at access point and

public road boundary. Proposed Strata unit numbers to be allocated will need to be established prior to final plan of subdivision. The applicant must liaise with Council's GIS Officer to establish appropriate unit numbering in accordance with AS/NZS 4819:2011.

Serviced Apartments

- (1) The serviced apartments (tourist accommodation) shall not be occupied by any proprietor or occupier for longer than forty-two (42) consecutive days or an aggregate one hundred and fifty (150) days in any twelve (12) month period. Such periods are to be calculated from the date of the first occupation of the serviced apartments (tourist accommodation).

The occupancy restrictions shall be incorporated into a Management Agreement for the serviced apartments (tourist accommodation). A copy of the Management Agreement shall be provided to Council **prior to the issue of the occupation certificate**.

A register shall be kept by the owner or proprietors to record the occupancies of the serviced apartments (tourist accommodation) and shall be available at any time for inspection by an authorised officer of Council.

A register which documents the individual financial transactions made by guests staying in the serviced apartments (tourist accommodation) is to be provided to Council prior to the issue of any Occupation Certificate and maintained at all times and provided to Council on request, demonstrating that the served apartments are not being occupied for longer than for longer than forty-two (42) consecutive days or an aggregate one hundred and fifty (150) days in any twelve (12) month period in any calendar year by an individual or family.

Notes

- (1) To ascertain the date upon which this consent becomes effective refer to Sections 4.20 and 8.13 of the Environmental Planning and Assessment Act 1979 (as amended).
- (2) In accordance with Section 4.53(2) of the Environmental Planning and Assessment Act 1979 (as amended) this consent will lapse on 29/11/2023 unless otherwise provided for elsewhere in Sections 4.53, 4.54 or 8.22 of the Act.
- (3) Sections 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 (as amended) confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court exercisable within six (6) months after receipt of this notice.
- (4) The applicant shall note that the development consent in no way authorises commencement of construction work. The latter can only be obtained through submission and approval of a satisfactory Construction Certificate Application.
- (5) For further information on contributions payable and attributable to this development your attention is directed to Council's *Section 94A (Indirect Contributions) Plan* which is available on Council's website – www.kiama.nsw.gov.au.
- (6) Sydney Water Approval Required.

For applications for approval of Council approved building plans to check if the proposed construction work affects Sydney Water services please refer to the website www.sydneywater.com.au for:

- Sydney Water Tap in TM
- Guidelines for Building Over/Adjacent to Sydney Water Assets – see Building Developing → Building and Renovating.