



Land and Environment Court
New South Wales

Case Name: Celesteem Rouse Hill Development v Blacktown City Council

Medium Neutral Citation: [2020] NSWLEC 1137

Hearing Date(s): 17-19 February 2020; Conditions filed 17 March 2020

Date of Orders: 24 March 2020

Decision Date: 24 March 2020

Jurisdiction: Class 1

Before: Smithson C

Decision: The orders of the Court are:
(1) Leave is granted to amend the application.
(2) The applicant is to pay the respondent's costs thrown away as a result of the amendments pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979 as agreed or assessed.
(3) The appeal is upheld.
(4) Development Application DA-18-01705, for demolition of existing structures, subdivision, and construction of attached dwellings, with associated works, is approved subject to the conditions in Annexure 'A'.
(5) The exhibits are returned with the exception of Exhibits A, D and R.

Catchwords: DEVELOPMENT APPLICATION — subdivision into 3 lots to reflect uses in different zones – further subdivision of residential land for attached dwellings on Torrens title lots – required road reserve width – impacts of roads, paths and temporary basin in RE1 (recreational) land – requirement for turning circles on incomplete roads – treatment of interface lots

Legislation Cited: Blacktown Local Environmental Plan 2015
Environmental Planning and Assessment Act 1979
Land and Environment Court Act 1979
State Environmental Planning Policy (Infrastructure) 2007
State Environmental Planning Policy (Sydney Region Growth Centres) 2006
Water Management Act 2000

Cases Cited: Trinvass Pty Ltd v Council of the City of Sydney [2015] NSWLEC 151

Texts Cited: Blacktown City Council Growth Centres Precincts Development Control Plan 2018
Blacktown City Council Engineering Guide for Development

Category: Principal judgment

Parties: Celesteem Rouse Hill Development Pty Ltd (Applicant)
Blacktown City Council (Respondent)

Representation: Counsel:
A Galasso SC (Applicant)
C Drury (Solicitor) (Respondent)

Solicitors:
Mills Oakley (Applicant)
Sparke Helmore Lawyers (Respondent)

File Number(s): 2018/336866

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal lodged under s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (the EPA Act) against the deemed refusal of Development Application DA-18-01705 (the application) for an attached housing subdivision (the subdivision) on land at Lot 312 in DP 208203, known as 54 Terry Road, Rouse Hill (the site).
- 2 The site has an area of 2.116 hectares and is situated on the western side of Terry Road. It contains an existing dwelling and ancillary rural structures. The

site slopes to the east and is heavily vegetated in its western portion. Second Ponds Creek also traverses this western portion of the site.

- 3 Development of the site is required to be assessed under the provisions of State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (the Growth Centres SEPP or the SEPP).
- 4 The provisions of the Blacktown Local Environmental Plan 2015 (the LEP) therefore do not apply. Development is however, also required to comply with the provisions of the Blacktown City Council Growth Centre Precincts Development Control Plan 2018 (the DCP).
- 5 Under the Growth Centres SEPP, the majority of the site, comprising the eastern portion fronting Terry Road, is zoned R3 – Medium Density Residential. The balance western portion, containing the adjacent vegetation and future recreational land west of the R3 zone, is zoned RE1 Public Recreation and, the creek corridor, SP2 Infrastructure (Local Drainage).
- 6 The surrounding land is in transition comprising a mix of semi-rural and recently subdivided land with dwellings and residential flat buildings (RFBs) under construction on Terry Road. Immediately to the north, at what is known as 44 Terry Road, is a newly constructed subdivision on R2 Low Density Residential zoned land. To the south is the recently constructed and elevated Sydney Metro line. The balance of the Sydney Metro land north of the line and immediately adjoining the site to the south is undeveloped and also zoned R3.
- 7 The application as lodged with the Court in November 2018 proposed the demolition of existing structures on the site and subdivision into 3 residue lots generally aligning with the 3 zonings over the site. On the R3 zoned land, 43 attached dwellings on Torrens title lots were proposed. Civil works associated with the subdivision were also proposed.
- 8 The proposed development is 'Integrated Development' pursuant to s 91 of the EPA Act as concurrent approval is required from the Department of Primary Industries pursuant to the *Water Management Act 2000*.
- 9 The application was notified and no submissions from the public were received. It was also subject to a number of external referrals.

- 10 The site is located within the Area 20 - Cudgegong Road Precinct of the North West Growth Centre release area under the Growth Centres SEPP, where the proposed development is permissible with consent and subject to the provisions of the Area 20 Precinct Plan (the Precinct Plan).
- 11 Controls, including objectives for development within the Precinct Plan zones, are contained in Appendix 6 of the Growth Centres SEPP and in Schedule Four of the DCP.
- 12 The original Council contentions for opposing the development, as contained in the Statement of Facts and Contentions (SFC) filed in December 2018, included design concerns associated with the proposed dwellings and non-compliances with the DCP. Numerous engineering issues were raised relating to the proposed drainage and the construction, design, width and location of the proposed roads. This included the need for temporary turning circles to be provided for waste vehicles for the roads which end at the southern lot boundary awaiting future adjoining development on the Sydney Metro land.
- 13 The Council also sought the provision of a 3.5m wide verge adjoining the RE1 land and for no development within the RE1 land. It was also contended that there was insufficient information to assess the impacts on biodiversity and natural areas within the RE1 land, in particular, to ensure that no existing native vegetation (ENV) would be removed.
- 14 Following lodgement of the appeal, conciliation was held between the parties under s 34 of the *Land and Environment Court Act 1979* (the Court Act) in June 2019. As a conciliated outcome could not be reached, the conciliation was terminated and the matter set down for hearing.
- 15 I presided over that conciliation and, at the hearing, the parties agreed that I could have regard to the evidence provided during the conciliation process: s 34(12) of the Court Act. As part of the conciliation, the Court viewed the site and surrounds. The parties' experts also attended the site view.
- 16 Following termination of the conciliation, the applicant was granted Leave by the Court in November, 2019 to amend the application to respond to a number of the SFC contentions and the matters discussed at conciliation.

- 17 The amended application addressed the majority of the dwelling design issues. Additional information was also provided on drainage and the proposed civil works. The road widths were increased and road designs altered. Fill was proposed on the 5 lots adjoining the southern boundary with a temporary drainage swale/channel proposed at the rear of those lots to divert drainage away from the Sydney Metro land. Temporary turning circles for waste vehicles were also shown for the roads which end at the southern boundary awaiting future adjoining development. The required external approvals had been provided, or were considered to not preclude consent being granted.
- 18 Additional information was also provided to address the bushfire and biodiversity issues including demonstrating that the proposed works would not involve the clearing of, or impact, ENV.
- 19 An amended SFC was filed in response to the amended application in December 2019 which indicated that a number of issues had been resolved.
- 20 Joint Expert Reports were filed dealing with the remaining contentions; being traffic and civil engineering (Exhibit 2), bushfire and ecology (Exhibit 3), and planning (Exhibit 4). As it was agreed that the bushfire and ecology issues were resolved, or resolvable by conditions, subject to no further incursion or change of the location of uses within the RE1 land, the only experts who were required to give oral evidence were the engineers and the planners. These experts were:
- Mr Varga, traffic engineer; Mr Koebsch, civil engineer; and Mr Mead, planner for the applicant; and
 - Mr Yee and Mr Merrilees, civil engineer; Ms Betts, planner; and Ms Spence, recreation planner, for the Council.
- 21 During the hearing, the applicant sought Leave to rely on further amended subdivision, engineering and landscaping plans which, in the main, reflected recommendations arising from the Expert Reports to further address outstanding contentions. In addition, the configuration of a temporary detention basin proposed in the RE1 zone was also amended to respond to recommendations of the arborists in terms of tree retention.

- 22 Leave was not opposed by the Council given it was agreed that the amendments to the application were not minor, and the Council's costs would therefore be paid. Leave was granted accordingly.
- 23 Having regard to the amended application, and following further discussion between the parties and their experts, it was confirmed to the Court that a number of contentions could either be resolved through conditions or were not so substantial as to warrant refusal of the application.
- 24 The issues that remained contended between the parties were:
- (1) The design and width of Road 3 and its partial location in the RE1 land;
 - (2) The need for temporary turning circles for waste trucks on the proposed roads which terminate on the southern boundary;
 - (3) The treatment of the temporary drainage proposed on the 5 southern lots which adjoin the Sydney Metro land; and
 - (4) The proposal for a temporary detention basin with the RE1 land.
- 25 Conditions of any consent based on the amended application were filed following the hearing's completion. A number of conditions were not agreed as they related to the contentions contested in the hearing.

Relevant planning controls

- 26 The aims of the Area 20 Precinct Plan, at clause 1.2 of Appendix 6 of the Growth Centres SEPP, include: to make development controls that will ensure the creation of quality environments and good design outcomes; to protect and enhance environmentally sensitive areas; to provide for recreational opportunities; and to promote pedestrian and vehicle connectivity with adjoining Precincts and localities and within the Precinct.
- 27 Under the SEPP, the maximum permissible height for the site is 8.5m, notwithstanding higher development is permitted in the R3 zones elsewhere in the LEP, and that an 8.5m height limit also applies to the R2 zoned land to the north of the site.
- 28 The objectives of the R3 zone under the SEPP are:
- To provide for the housing needs of the community within a medium density residential environment.

- To provide a variety of housing types within a medium density residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
 - To support the well-being of the community by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a medium density residential environment.
- 29 Under the SEPP, the RE1 zoned land is required to be acquired and developed by the Council for public recreation and the SP2 zoned land for drainage.
- 30 The objectives of the RE1 zone under the SEPP are:
- To enable land to be used for public open space or recreational purposes.
 - To provide a range of recreational settings and activities and compatible land uses.
 - To protect and enhance the natural environment for recreational purposes.
- 31 Within the RE1 land, the list of defined permissible uses includes “Environmental Protection Works”, “Roads” and “Waterbodies (artificial)”.
- 32 The parties agreed that the portion of Road 3 proposed on the RE1 zoned land could either be approved as a permissible use in the RE1 zone accordingly, or approved under the provisions of clause 5.3 of the Area 20 Precinct Plan, the relevant provisions being as follows:

5.3 Development near zone boundaries

(1) The objective of this clause is to provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone.

(2) This clause applies to so much of any land that is within the relevant distance of a boundary between any 2 zones. The relevant distance is as follows—

- (a) -
- (b) -,
- (c) in any other case—30 metres.

(3) -

(4) -

(5) Despite the provisions of this Precinct Plan relating to the purposes for which development may be carried out, consent may be granted to development of land to which this clause applies for any purpose that may be

carried out in the adjoining zone, but only if the consent authority is satisfied that—

(a) the development is not inconsistent with the objectives for development in both zones, and

(b) the carrying out of the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of land.

(6) - .

33 In terms of these provisions, the Road 3 reserve extends 4.5m into the RE1 zone from the R3 zone. It is therefore within 30m of it.

34 The DCP contains general controls for all Growth Centre Precincts, including controls of relevance to the design of the proposed roads, whilst the specific controls for development in the Area 20 Precinct are in Schedule Four.

The design, width and location of Road 3

35 The major issue between the parties was the proposed width and location of Road 3, being the western most proposed road within the subdivision. Road 3 is to intersect with Road 2 at the northern boundary of the site. Road 2 runs east-west, is known as Boolavogue Road, and is also to be upgraded as part of the subdivision works. Road 3 then joins, and becomes a continuation of, an existing road to the north of Road 2 known as Bella Parade. In the future, Road 3 will also link to a proposed future road to the south in the Sydney Metro land to form a continuous north-south perimeter road west of the residential development to the east of it.

36 The applicant had amended the design of Road 3 to accommodate an 18m wide road reserve as sought by the Council. This road reserve width is required for a road designated as a 'Medium-high density local road' at Figure 3-14 of the DCP, which comprises the typical section for such a road. The Council advised that it was the Department of Planning, not the Council, who had prepared the DCP and determined that local roads in the R3 zone should be designed with a width of 18m whilst a lesser width was permitted in the R2 zone. This included the R2 land adjoining the site to the north which had resulted in a lesser width being accepted by the Council for Bella Parade.

37 Within the proposed 18m road reserve, 11m is for the proposed road carriageway or pavement, 3.5m for a proposed eastern verge (with a roll kerb)

adjacent to the residential development, and 3.5m for the western verge, which includes a barrier kerb, a 2.5m wide shared cycle and pedestrian path (the shared path), a retaining wall, and a pedestrian handrail.

- 38 Of the entire 18m width of proposed Road 3, 4.5m containing the western most kerb and verge (with the shared path and associated works) is proposed within the RE1 land. In addition, a disabled ramp and stairs are proposed to provide access from the shared path to the RE1 land. The path is required to be elevated given the difference in levels between the finished road and the RE1 land and to avoid disturbing a tree, known as Tree 48, which is situated within the ENV adjoining the southern-most portion of Road 3.
- 39 In essence, the applicant argued that the shared path would provide appropriate facilities in, and access to, the RE1 land in accordance with the intent of the Precinct DCP controls and the objectives of the RE1 zone, and that roads were a permissible use in the RE1 zone. Therefore, there should be acceptance that part of the road containing the shared path should be permitted on the RE1 land.
- 40 Alternatively, if the Council agreed to a reduced road reserve width of 13.5m, adopting the same 9m pavement width as exists in Bella Parade and deleting the shared path, then the applicant would redesign the road accordingly, and the 4.5m 'encroachment' within the RE1 land would not occur.
- 41 The Council argued that the proposed road was a subdivision road and should be wholly contained within the residentially zoned portion of the site accordingly, and be designed to have an appropriate interface with the RE1 land that did not include an elevated path which would be difficult to maintain. The Council therefore sought that Road 3 be maintained at an 18m width but relocated 4.5m to the east so as not to have any encroachment on the RE1 land.
- 42 The applicant argued this relocation would have adverse consequences for the subdivision design, with the loss of at least 2 if not 3 residential lots, and therefore dwellings. The Council argued that, if each of the proposed lots was reduced by some 7m², the existing dwelling yield and required minimum lot size could still be achieved.

43 However, such a redesign would require the relocation of proposed Roads 1 and 4. The Council accepted this would require a modification to the approved Indicative Layout Plan (ILP) for the Precinct.

44 The Council did not raise any specific concerns in terms of the permissibility of the proposed uses or the environmental impacts of Road 3 being in the RE1 land accepting that the subdivision had been designed, including in terms of uses in the RE1 land, to attempt as far as possible to preserve existing vegetation. The issue was the use of RE1 land for a subdivision road.

45 Both parties referenced controls in section 3.4.1 of the DCP including Control 10 as follows:

“10. Where local roads are adjacent to public open space or drainage land, verge widths may be reduced to a minimum of 1m, subject to public utilities, bollards and fencing being adequately provided. Consideration of proposals for reduced verge widths will be solely at the discretion of Council and only where the finished road design levels match with existing levels of open space or drainage land and negate the need for any retaining wall or battering. Applications that propose reduced verge widths will be assessed by Council with consideration given to:

- public access to the reserve
- impact on existing vegetation and environmentally sensitive areas
- public amenity
- public safety
- impact on ability to provide street tree planting.

Where arterial roads are adjacent to public open space or drainage land, the urban border behind the kerb (verge) must be minimum width of 3.5m to accommodate footpath / shared path, utilities, signage, etc.(sic)”

46 Control 11 of the DCP requires that, unless otherwise provided for in the DCP, all streets are to be designed and constructed in accordance with the minimum requirements set out in Council’s ‘Engineering Guide for Development’ (the Engineering Guide).

47 Section 3.2.1 of Schedule Four of the DCP contains objectives and controls for public transport and pedestrian and cycle networks in the Area 20 Precinct. In this regard, pedestrian and cycle links and routes are to generally be provided in accordance with Figure 3-3: Pedestrian and Cycle Network. For the site, Figure 3-3 shows a ‘secondary shared route’ along Boolavogue Road being the

east-west road (Road 2) along the northern boundary of the site connecting Terry Road to Road 3.

- 48 Although initially disputed by the Council as to the form and location of a path shown in the western portion of the site, it was subsequently agreed that this path was designated in Figure 3-3 as a 'Recommended off road recreational shared pedestrian & bikeway'. It is located in the RE1 zoned land immediately adjacent to, being west of, the indicative location shown in Figure 3-3 for Road 3/Bella Parade.
- 49 The Council engineers also raised a concern with the intersection of Roads 2 and 3. The intersection is at a low point, or sag, and the issue is that the depth may be excessive and be a risk to vehicles traversing the roads and to the floor levels, or freeboard, of adjoining dwellings. It was, however, agreed that the intersection design could be resolved by conditions, including requiring calculations to be undertaken to confirm the depth of the flow.
- 50 The main issue remained however, the 'encroachment' of Road 3 into the RE1 land.

The applicant's arguments

- 51 The land to the north is zoned R2 so the width of Bella Parade is less than the required width of Road 3, with a pavement width of only 9m. Mr Galasso, SC, counsel for the applicant, submitted that the road widths would therefore be inconsistent for what is intended to be a continuous north-south road and creating a tunnelling effect when travelling south to north.
- 52 Further, whilst the residential portion of the site is zoned R3, it will not be developed to the same (or maximum) density permitted in other R3 zoned areas where there is no 8.5m height limit, and RFBs are permissible up to 26m, which would generate significantly more traffic than is proposed here. The road width required by the Council was the same as is required within several zones where much higher densities and traffic volumes are likely, including the R5, B2 and B4 zones. The limit of development of the site to a height of 8.5m, effectively precluding RFBs and higher density development, should be a factor for consideration in varying the width required under the DCP.

- 53 Further, the applicant is being required to provide a path to nowhere as it terminates on the northern boundary, being not continued in the development to the north, and as the Council did not own the RE1 land and could therefore not construct a path to continue the path provided.
- 54 Mr Varga's evidence was that a narrower, 9m wide, pavement was supportable on traffic grounds. In this regard, he had undertaken a traffic assessment in October 2019 (Annexure 18 to the Expert Report, Exhibit 2) which identified that the projected future traffic volumes expected to use Road 3 justified a narrower width. His assessment used the traffic volumes coming from Boolavogue Road, being the collector road on the northern boundary of the site, based on known and assumed volumes from future development of the site and surrounding land.
- 55 Based on his assessment, less than 15 vehicles per hour would use Road 3 at peak times, being very low volumes that could safely be accommodated within 9m, that being the carriageway width of the road to the north (Bella Parade). Further, the encroachment of Road 3 into the RE1 land continues the same arrangements for this road that have already been approved on the sites to the north.
- 56 If the pavement width was reduced to 9m to match that of Bella Parade and the shared path removed, and that verge reduced to 1m as Control 10 allows, there would be no incursion into the RE1 land. However, there would still be a level difference between Road 3 and the RE1 land requiring retaining walls or batters. Bella Parade had such works in the RE1 land and itself partially encroached into the RE1 zone. Further, Road 3 still has to join Bella Parade within the RE1 zone and where there is a change in levels.
- 57 As Control 10 of the DCP supports a reduction in verge width adjacent to public open space, consideration could be given to reducing Road 3's width to less than 18m to minimise impacts on the RE1 land, without needing to relocate the road to the east. Further, Control 3 of section 3.4.1 of the DCP allows alternative street designs for local streets on a case-by-case basis if they preserve the functional objectives and requirements of the design standards.

- 58 Mr Galasso also cited the Court's decision in *Trinvass Pty Ltd v Council of the City of Sydney* [2015] NSWLEC 151 which references now s 4.15(3A)(b) of the EPA Act. This section requires that, if a DCP contains provisions which set standards with respect to an aspect of the development, and the application does not comply with those standards, the DCP is to be flexibly applied and allow reasonable alternative solutions that achieve the same objectives. Road 3 at a reduced reserve width would still meet the requirements for a local road, and the Court could flexibly apply the DCP standard accordingly, given the circumstances.
- 59 Mr Koebsh's evidence was that the road transition to Bella Parade requires retaining walls and a suspended footpath to achieve the grades the Council requires and would likely apply wherever the road was positioned. He also reiterated that the Council had allowed retaining walls and batters in Bella Parade within the RE1 land.
- 60 Mr Mead's evidence was that the boundary between the R3 and RE1 zones does not appear to follow any strategic, natural or physical boundary and he had prepared an overlay, included within the Expert Report (Exhibit 4), which indicates that the road in the ILP encroaches into the RE1 zone in the position proposed for Road 3.
- 61 The applicant had also originally proposed a reserve width of 13.5m for Road 3 to match that of Bella Parade and confined to the R3 zone. However, the Council required the width to be increased to 18m. Accordingly, the western alignment of the 18m wide road was located to match the location supported in the ILP.
- 62 Mr Mead also argued that Road 3 provides a north-south shared pathway as envisaged within the RE1 land shown in Figure 3-3 of the Area 20 Precinct Plan in the DCP. The RE1 land will therefore be publicly accessible with Road 3 a public road within it providing public access to that land. The proposed path and access ramps will be funded by the applicant but publicly accessible enhancing the useability and connectivity between the R3 and RE1 land.
- 63 Further, Court decisions have stated that it should be assumed that uses are supported in zones where they are permissible subject to acceptable

environmental impacts. The RE1 zone is not an environmental protection zone, rather a zone where some modification to landform and structures must be envisaged in order to accommodate the recreational use for which the land is zoned. Only a minor amount of the total RE1 zone is impacted and there will be no material loss of public open space. Rather, a small portion of it will be developed for uses which are envisaged to occur in the zone.

- 64 Mr Galasso queried what the interface with the RE1 land would be if the 18m road reserve was relocated wholly within the R3 land adjoining the RE1 boundary. If it was the retaining walls, batters and fence that exist the entire western length of the road to the north, including north of 44 Terry Road, that was not a desirable built form outcome nor would it provide the accessibility for the public to the RE1 land encouraged in the Precinct Plan. In contrast, the proposed ramp and stairs would provide equitable access for future users of the RE1 land. The alternative would be a continuation of the barrier fencing between the subdivisional road and the RE1 land as exists to the north.
- 65 Instead, the shared path in Road 3 could replace or form a component of the required path shown conceptually in RE1 land in Figure 3-3 of Schedule Four of the DCP whereas it would not be possible to provide a separate path as proposed in Figure 3-3 between the proposed road and the ENV. This was given the close proximity of the ENV to the zone boundary in the south western portion of the site. In this regard, Ms Spence had accepted that there were limited places that a shared path could go in the RE1 land in this portion of the site given the proximity of the ENV to the R3 zone.
- 66 Road 3 must be considered consistent with the objectives of the RE1 zone. It would enable the RE1 land to be used for public open space and recreational purposes in the future in a range of recreation settings whilst protecting and enhancing the natural environment by locating the path outside ENV.
- 67 Finally, roads are a discrete permissible use in the RE1 zone and there was nothing in the controls proscribing roads in the zone. The majority of the road in the RE1 zone contains the shared path, which is in the only location such a path could likely be provided in the RE1 portion of the site in the future. This is

in terms of the intended network shown in the DCP and given the location of ENV in the south-western portion of the site.

- 68 There is additional benefit to the Council of not only having the shared path provided by the applicant within the RE1 land, but also having less RE1 land required to be acquired by the Council from the applicant in the future.
- 69 In summary, developments on at least 3 properties to the north of the site have retaining walls, reduced verge widths to the RE1 land, no shared paths and road components in the RE1 land. Yet the Council says that Control 10 of the DCP now does not support any of these features but requires an increased pavement width due to the zoning of the site, despite the fact that it will not be developed to a typical R3 density. Further, none of the developments to the north have provided any opportunity for pedestrian links to the RE1 land or for connection with the proposed path on the applicant's land.
- 70 Whilst the application proposes a minor encroachment into the RE1 zone, this is primarily for a use (a shared path) that is permissible and expected in that zone, and encouraged by the DCP to provide connectivity.
- 71 The associated structures, ramp, stairs and landscaping are designed to protect and enhance the natural environment whilst providing for recreational activities. Thus the objectives for the zone are met.
- 72 The Court was advised that the applicant would accept the Court's decision on which road width should be required, namely 18m or 13.5m, providing the road did not move east. Moving an 18m road reserve east to be clear of the RE1 land was not reasonable nor justified when the majority of the encroaching width was to provide a shared path that was a use appropriate for, and contemplated and permissible in, the RE1 zone.

The Council's arguments

- 73 Mr Drury, solicitor for the Council, advised that the Council accepted that the majority of the intrusion of Road 3 into the RE1 land comprised the shared path component. Further, that the public should not be excluded from the RE1 land in the future but should have access to it. The Council also understood why the path was elevated in its southern portion, and that this may be required

irrespective of the road's final location, given the different levels between the finished road and the RE1 land, requiring either battering or retaining accordingly.

- 74 However, Mr Yee advised that DCP Control 10 was amended in 2016 to address some of the RE1 interface issues. It clarified the requirements of the control to those that exist today. Prior to that amendment, Control 10 was limited to the following:

“10. Where local roads are adjacent to public open space or drainage land, verge widths may be reduced to a minimum of 1m, subject to public utilities, bollards and fencing being adequately provided.”

- 75 In particular, he argued that this wording had led to poor design outcomes, such as existed with the RE1 interface with Bella Parade, and was changed accordingly to specify on what basis reduced verge widths adjoining RE1 land would be supported.
- 76 He further argued that the ILP for Precinct 20 showed the edge of Road 3 running along the RE1 boundary not within it. The full road formation at 18m should be outside the RE1 land accordingly, albeit he accepted that some encroachment of the reserve for the road to the north, containing batters and retaining walls, may have occurred in the RE1 land. The extent of such encroachments was not however, known.
- 77 Further, reducing verge widths to 1m using Control 10 is only permitted where the finished road would be level with the adjoining land and no battering or retaining walls are required. This is not the case for Road 3.
- 78 Whilst he did not dispute the traffic volumes predicted by Mr Varga, Mr Yee considered these irrelevant as the DCP requires the 18m reserve width, being the design width for a variety of development scenarios. The Council sought to achieve consistency in the road widths provided in the various zones. For this reason, the DCP widths were consistently applied and rarely varied even though the DCP allows variations. Further, what is proposed is a significantly increased density relative to that in the R2 zone.
- 79 Mr Merilees was concerned that the proposed alignment of Road 3 within the RE1 land results in the use of extensive retaining walls, rather than batters, as

well as traffic barriers and pedestrian fencing. The suspended footpath over the road reserve (to protect Tree 48 and because works are precluded from the ENV area) would cause unacceptable maintenance costs and risks to the Council. This would be alleviated with relocation of the road outside of the RE1 land.

- 80 Further, the designs had not shown a suitable road transition to Bella Parade nor had they accounted for a required radius for the bend at a 60km/hr design speed.
- 81 Mr Yee elaborated on the concerns of the Council, being that the suspended footpath would create an undercroft area which would encourage anti-social behaviour as well as a road safety hazard requiring a traffic barrier to prevent vehicles travelling on the suspended footpath. These works would also affect the visual amenity and accessibility of the RE1 land.
- 82 The shared path the applicant is being asked to provide would not be a path to nowhere as it could link in with the east-west cycle shared path being provided on Road 2 (Boolavogue Road) and, in the future, connect with a similar path to the south and shared paths developed in the RE1 land.
- 83 Ms Spence accepted that there had been no detailed planning or design of uses within the RE1 zone. However, she argued that this work was in the process of being undertaken and the Council had a very clear understanding of what the land would accommodate including a corridor park, playground, cycleways and landscaping outside the ENV areas. She was critical that the infrastructure proposed as part of Road 3 was more akin to works in a civic plaza than a riparian corridor park in a suburban area.
- 84 Ms Spence was particularly concerned with the elevation of the path. Whilst accepting that it needed to be elevated to protect Tree 48 under the current design, she believed that a path could be designed around this constraint if the 4.5m encroachment of the road into the RE1 land did not exist and did not result in significant structures being developed close to ENV. The Council envisaged the public using level paths in a landscaped setting not adjacent to roads where safety for users could be compromised. Handrail, walls and steps also did not provide all ability access.

- 85 Further, providing the road in the RE1 zone would result in a loss of some 371.7m² of RE1 land to the community for the benefit of the applicant. The Council's Contributions Plan did not envisage a loss of public open space which could not be supported given the anticipated future demand for this space.
- 86 She also disagreed that there was no basis for the zone boundary, stating it was in response to the natural features by providing sufficient land to enable public access north-south along the edge of the RE1 land whilst avoiding the ENV. She also did not accept that the ILP showed roads encroaching into the RE1 zone. In any event it was an indicative plan only.
- 87 Ms Betts argued that a road in the RE1 zone for a residential subdivision did not meet the objectives of the RE1 zone nor was it a suitable use in the zone. Locating the road outside the RE1 zone would provide for more opportunity to protect and enhance the natural environment with a wider buffer to the ENV and would still allow for future access to the RE1 land.

The temporary turning circles

- 88 The Council advised that turning circles are required for interim roads under the Engineering Guide and their provision was imposed as a standard condition of consent for such roads. Hammer heads were not acceptable.
- 89 The Council was concerned that an inadequate temporary truck turning circle was provided at the southern end of proposed Road 3, being not at the end of that road.
- 90 Further, whilst temporary turning circles for the other two temporarily 'dead end' roads, being proposed Roads 1 and 4, were in a satisfactory location adjoining the southern boundary, they were not necessarily to a satisfactory design.
- 91 The turning circles need to be designed at a physical capacity so that waste vehicles could turn and there was also no detail as to how this could be practically implemented having regard to the required barrier kerbs, footpaths, adjacent driveways and drainage paths. Some turning areas would be over

suspended slabs and these raised a number of safety and design concerns that were unresolved.

- 92 Mr Varga argued that temporary turning circles had not been required elsewhere in the Blacktown Growth Centre area. He referenced various aerial photos taken in October 2019 and included as Annexure 21 to the Expert Report (Exhibit 2) which he said demonstrated this.
- 93 However, Mr Yee argued that the Council had imposed the requirement for temporary turning circles as conditions of past consents in the area, albeit a variety of designs had been constructed and not all of them had been adequate, maintained or retained. He claimed it was a safety issue with waste trucks needing to reverse down dead-end residential streets, and that this had been an issue for the Council in the past.
- 94 Mr Galasso submitted that this practice must be occurring in locations where turning circles were not in existence, and it was a waste of money to provide them for interim roads when the development of the land to the south was likely imminent and the works would then have to be taken out. Rather, drivers should be vigilant in using such roads which, in any event, were relatively short with limited adjacent dwellings.
- 95 Whilst it was agreed that a prohibition on development of the southern lots, as is discussed later, would provide an opportunity to increase the radius of the turning circles, the Council was concerned this would not facilitate the required full bulb. Detailed designs of what was proposed still needed to be prepared and reviewed.
- 96 During oral evidence, it was agreed that the location and design of the temporary turning circles, should the Court grant consent and require them, could be addressed by conditions of consent. These conditions were subsequently agreed in the conditions filed.

The southern interface lots

- 97 There are 5 proposed lots which adjoin the common boundary with the Sydney Metro land to the south which need to be filled by up to 1.3m above the height of the Sydney Metro land as part of the subdivision. This fill will alter overland

flow paths, and an appropriate drainage response is required accordingly. The 5 lots are known as proposed Lots 20, 26, 32, 38 and 43 (the southern lots).

- 98 The southern lots are therefore proposed to be retained, with overland drainage controlled by a swale or box channel at the rear of the lots pending development (ie. filling) of the Sydney Metro land. These works would impact development on the southern lots in the interim whilst they are required.
- 99 The Council sought that the southern lots not be subdivided but remain a residue lot pending development of the Sydney Metro land at which time the swale can be removed. The Council understood that Landcom had been appointed to progress the development of the Sydney Metro land which was therefore considered likely to occur in the foreseeable future.
- 100 If the 5 lots were subdivided and sold, the Council was concerned with having to deal with 5 separate owners to facilitate removal of the temporary works and refilling of the lots prior to their development with dwellings whilst piecemeal filling could have drainage impacts. The Council had experienced issues in the past in dealing with individual owners even where protected by legal instruments requiring them not to build. Mr Yee did accept that a solution may be to approve the subdivision but not allow release of the linen plan or subdivision certificate until after the land to the south was developed and the works removed.
- 101 The Council was also concerned with the discharge point from the temporary channel as the designs did not deal with the swale flows into the RE1 land, which will discharge below existing surface levels and could potentially impact ENV. This could be resolved with wider swales on proposed Lot 20.
- 102 It was agreed in oral evidence that these issues could be potentially resolved with more detailed design and appropriate conditions. However, under any scenario, the parties agreed that dwellings should not be constructed on the southern lots whilst the temporary drainage works exist. The Council's preferred position remained; that the southern lots be consolidated into a single lot linked by a vinculum across the roads until the adjoining site to the south is filled and the swale removed.

- 103 The applicant opposed this as it would require a further subdivision application to be made, arguing a better outcome would be appropriately worded conditions that allow the creation of the lots but preclude the development of the dwellings on them pending filling, to a matching level, of the Sydney Metro land and removal of the need for retention and drainage diversion.
- 104 Such a course of action would facilitate the orderly and economic development of the applicant's land, and the Sydney Metro land, being one of the objects of the EPA Act. Otherwise, the applicant is precluded from reasonably developing the site as the development timeframe of Sydney Metro is unknown.
- 105 Ultimately, the parties agreed to conditions addressing the drainage of the southern lots and permitting their subdivision as the last stage of the development, and not approving dwellings on them until the development to the south enables the removal of the temporary drainage works, should the Court grant consent on this basis.

The temporary detention basin with the RE1 land

- 106 The Council accepted that a temporary detention basin, meeting water quality objectives, was permissible in the RE1 zone and also that such a use had been approved and existed, with 2 basins in the adjoining development to the north. However, those basins were in the general vicinity of the proposed permanent regional retention facilities which will discharge into a nearby watercourse. Mr Merrilees indicated that it was for this reason that the Council had supported those basins in the RE1 land given the intent to expand the basins to the north so as to not impact on ENV to the south. That was different to the temporary basin proposed on the appeal site.
- 107 Whilst Mr Drury accepted that the temporary basin in the RE1 land was not a basis for refusal, given it was a permissible use in the zone, the Council's position was that the temporary basin should be relocated to proposed Lot 14 within the subdivision as it could be 4-5 years before regional drainage was provided in the area.
- 108 The Council's proposed conditions of consent require this relocation, with the design of a location on Lot 14, and the associated management regime, required to be resolved as a deferred commencement condition.

- 109 The applicant opposed all conditions requiring relocation of the basin.
- 110 Mr Galasso submitted that, notwithstanding the applicant had agreed to pay the required developer contributions and had entered into a Voluntary Planning Agreement for this, no detailed permanent regional drainage design had been undertaken or timeframe or locations given for these works. Accordingly, the temporary basin had to be provided. The RE1 land was still in the applicant's ownership and the basin had been redesigned to be clear of ENV. Once it was no longer required and owned by the Council, the Council could use the basin land for other appropriate RE1 uses.
- 111 Alternatively, the temporary basin could form part of a relocated location for the permanent basin linking with the existing temporary basins to the north.
- 112 Further, the temporary basin was, arguably, a permissible development, as a 'stormwater management system' that did not require consent if carried out on behalf of a public authority (in this case the Council) under clause 111 of Division 20 of State Environmental Planning Policy (Infrastructure) 2007 (the ISEPP). Consent is only required under the ISEPP if others construct the basin; clause 111A.
- 113 However, Mr Galasso advised that the applicant would accept relocation of the basin to proposed Lot 14 if the Court considered its location in the RE1 land to be unacceptable.

Findings

- 114 At the end of the hearing, the only significant issue remaining between the parties was the location of proposed Road 3 and, in particular, the 4.5m section proposed in the RE1 zoned land.
- 115 Given the circumstances, and based on the evidence, I consider that the location of Road 3 is neither a basis for refusal of the application nor inappropriate. The application is approved accordingly.
- 116 My reasons for this finding are as follows.
- 117 Whilst I accept that the road is being constructed for the purposes of serving dwellings in the adjacent subdivision, it is also a road that will provide future public access to RE1 land and the facilities envisaged for that land. It is

therefore not unreasonable that a portion of the road, which predominantly comprises a shared use path being a use promoted in and serving the future use of the RE1 land, is accommodated on that land.

- 118 Further, the evidence suggested that the continuation of Road 3 in recent subdivisions to the north of the site, including batters, retaining walls and fences associated with that road, already encroach on the RE1 land. Whilst this may not be to the same extent as is proposed for Road 3, that existing road to the north (Bella Parade), does not provide any shared path or access to the RE1 land. To the contrary, fencing precludes such access.
- 119 It was also agreed that a suitable road transition from Road 3 to Bella Parade is required. Assuming a portion of Bella Parade, including its associated batters and retaining walls, is located in the RE1 land, this section of Road 3 would, by necessity, also have to be within the RE1 land.
- 120 I consider that Road 3, constructed in accordance with agreed conditions for the design of the intersection with Road 2 and the link to Bella Parade, will provide a reasonable degree of permeability and achieve the ILP vision for a continuous north-south road to the west of residential development and separating that development from the vast majority of the RE1 land.
- 121 Further, the shared path within Road 3 can likewise make a contribution to the future pedestrian and cycling connectivity from north to south within the RE1 land linking to residential development to the east though a connection with the east-west path provided in Road 2.
- 122 Whilst I accept that the elevated design of the path may not be ideal, it is in response to an environmental constraint that exists in the RE1 land, being a constraint which could equally restrict the design of future paths and facilities in that portion of the RE1 zone. If the road was moved off the RE1 land, as the Council seeks, it would result in a shared path being provided, as the Council also seeks, adjoining RE1 land in which the Council envisages locating such a path in the future. There seems little logic in this outcome.

- 123 Put another way, there would seem little justification for requiring a shared path on the western side of Road 3 and a shared path in the adjacent RE1 land. What is proposed instead can serve the function of both.
- 124 The Council accepts that the alternative of permanently fencing the interface with the RE1 land along the perimeter of Road 3 is not a desirable outcome. Nor does it achieve the objectives of providing public access to the RE1 land, once that land is acquired by the Council.
- 125 Approval to the application as proposed will result in the road width specified by the DCP, albeit part of that width is accommodated on the RE1 land. This is an acceptable outcome given the dual function the road will perform of serving the subdivision now but enabling future public access to and within the RE1 land.
- 126 Further the ILP is, as the name suggests, indicative only, including in terms of road location, and the evidence was inconclusive as to whether or not Road 3 may in fact be, in part, within the RE1 zone in the ILP in any event.
- 127 I also accept Mr Mead's evidence that a redesign of the subdivision to move Road 3 east by 4.5m, to be out of the RE1 zone, would result in a loss of at least 2 lots and, therefore, 2 dwellings. The alternative suggested by Ms Betts of reducing all lot sizes to maintain the dwelling yield would result in a required relocation of proposed Roads 1 and 4 which, she accepted, would itself be inconsistent with the ILP and require modifications to it. If that change is supported by the Council, then similarly any relocation of Road 3 by 4.5m which results in a shared path within the RE1 land, is also a worthy basis to amend the ILP, were such an amendment demonstrated to be required.
- 128 Relocating Road 3 would also place it even further east of the Bella Parade alignment, which it is required to be a continuation of under the ILP, compounding the difficulty of an appropriately designed transition within the RE1 land, and further separating the path from future paths proposed within it.
- 129 Finally, the shared path component of Road 3 within the RE1 land is, in my view, consistent with the future indicative path network for this section of the RE1 land as shown in the DCP at Figure 3-3 of Schedule Four.

- 130 In approving the amended application, including the proposed width and location of Road 3, I have had regard to the objectives of the RE1 and the R3 zones, and consider the development to be consistent with those objectives.
- 131 Firstly, in terms of the applicable R3 zone objectives, the dwellings proposed in the subdivision will assist in providing for the housing needs of the community and the variety of housing sought within a medium density residential environment.
- 132 In this regard, I note that there were no design or density issues raised by the Council, in terms of the design of the dwellings, in the amended application. These dwellings all also comply with the height requirements for the site.
- 133 The development will also meet the objective of supporting the well-being of the community by enabling recreational and other activities which are compatible with the amenity of a medium density residential environment.
- 134 Secondly, in terms of the RE1 zone objectives, Road 3, and the shared path component of it in particular, will enable the RE1 land to be used in the future as public open space and for recreational purposes, and is a use compatible with providing for a range of recreational settings and activities. By locating the shared path and the road outside the ENV areas, and elevating the path, the environment is protected. By not requiring an alternative path elsewhere in the RE1 land in the vicinity, potentially closer to ENV, and by protecting Tree 48 in the path's design, the environment is also arguably enhanced, whilst pedestrian and cyclist access to the facilities envisaged in the RE1 zone is accommodated, even if the Council would prefer a different design for this access.
- 135 I also consider that the development meets the aims and relevant controls of the Area 20 Precinct Plan at clause 1.2 of Appendix 6 of the Growth Centres SEPP. These include ensuring the creation of quality environments and good design outcomes, to protect and enhance environmentally sensitive areas, to provide for recreational opportunities, and to promote pedestrian and vehicle connectivity with adjoining Precincts and localities and within the Precinct.

- 136 Under the Growth Centres SEPP, the RE1 zoned land is required to be acquired and developed by the Council for public recreation. It is the case that the Council will now not need to acquire that portion of the RE1 land on which the road and path will be constructed and dedicated as a public road. Nor will the Council incur the expense of constructing a shared pedestrian and cycle path in this location in the future.
- 137 In this regard, I agree with Mr Galasso that, in essence, the applicant is providing, in the western verge of Road 3, infrastructure on RE1 land at no cost to the Council, where the land and similar infrastructure is otherwise required to be acquired, funded and developed in the future by the Council.
- 138 This in a location where there are limited feasible options to locate a shared path as envisaged in the DCP between residential development and the ENV. As I have already indicated, it would make no sense to require a shared path as part of Road 3 now and for the Council to duplicate such a path in the adjoining RE1 land in the future.
- 139 As an alternative, the applicant offered to not provide the path at all, thus enabling a reduction in the width of Road 3 to 13.5m to reflect the design and width of Bella Parade. This would enable the road to be confined to the R3 zone, other than where it joined Bella Parade, and for the Council to determine a location for the shared path in the RE1 land in the future.
- 140 In this regard, the DCP allows road designs and widths to be varied generally, whilst Control 10 in section 3.4.1 enables verge widths to be reduced to 1m for local roads, such as Road 3, which are adjacent to public open space. However, consideration of proposals for reduced verge widths require that finished road design levels match with existing levels of the open space land, thus negating the need for any retaining walls or battering, which is not the case in this instance.
- 141 Therefore, although a reduced width arguably meets the matters for consideration in allowing a reduction in verge width (namely; in providing for public access to the open space, not impacting on existing vegetation and environmentally sensitive areas, providing public amenity and for public safety,

and not necessarily impacting on the ability to provide street tree planting), this is only supported where levels match, which is not the case in this application.

- 142 Further, I accept that the Council is applying the 18m road width specified by the DCP for local roads on R3 zoned land which is consistently applied. Therefore, notwithstanding the flexibility available in the DCP itself and at s 4.15(3A) of the EPA Act to vary the width on the basis of low projected traffic volumes and the limitations on the form of development permitted on the site even with an R3 zoning, the applicant has not sought a reduction in width in the application. Nor has the Council supported this.
- 143 Given the application proposes to construct Road 3 at the width and to the design required by the DCP, I do not see a basis to reduce that width and thus remove the opportunity to provide the shared path.
- 144 In summary, in terms of Road 3, the Precinct Plan and DCP clearly envisage embellishment of the RE1 land with a range of recreational facilities and with cycle and pedestrian paths. The shared path in the RE1 land comprising the western portion of Road 3 can contribute to that network and avoid the need for duplicating the path elsewhere in the RE1 zone on more environmentally sensitive land.
- 145 The Council also accepted that, in the future, the path would likely be extended through the RE1 zone to the north to the future permanent regional basin. If that is the case, there is no reasonable argument why one aspect of such a network should have to be located outside the RE1 boundary simply because it comprises part of the subdivisional road serving an adjoining residential development. Rather, it provides opportunities for pedestrians and cyclists to access the RE1 land in the future that the continuation of the same road to the north does not provide. The location and width of Road 3 to include this path is supported accordingly and all conditions of consent requiring its relocation from the RE1 zoned land are removed accordingly.
- 146 Dealing with the other contended matters, I accept the applicant's submissions that the agreed conditions adequately and reasonably address the treatment of the 5 southern interface lots. Whilst the lots can be created, there is no approval for the dwellings proposed for these lots so they cannot be developed

with dwellings whilst the temporary drainage works are required and the Sydney Metro land remains undeveloped. However, a further development application is not required to subdivide them as would be required if they remain as a residue lot. On balance, given the conditions proposed, I do not consider it necessary to require the 5 southern lots to remain as a residue lot pending the development of the Sydney Metro lots. Instead, the agreed conditions restricting the development of these lots, should I not require they remain a residue lot, are imposed.

- 147 I do, however, consider it reasonable and appropriate for the subdivision works to include temporary turning circles for the 'dead end' subdivisional roads until these roads are continued to the south.
- 148 These works may be temporary and, I accept, will be required to be removed in the future. However, it is not known how long they will be required for. In the interim, I accept the Council's evidence that, without provision of these works, unnecessary safety issues arise. Waste trucks, indeed any trucks, should not be reversing down residential roads if this can be avoided, irrespective of the length of the roads and even if this may occur in older subdivisions in the area. It is not adequate, as the applicant claims, that drivers should just be more vigilant in using such roads.
- 149 In any event, given the prohibition on dwellings being developed on the southern lots, this may reduce the impost of providing the turning circles albeit I accept that there will be some cost of doing these works for the applicant which may only be in place for a brief period of time.
- 150 This is a consequence however, of developing the site ahead of adjacent development to the south. What is proposed are standard conditions for interim incomplete subdivisional roads. Whether different conditions on earlier subdivisions have required lesser works, have not been enforced, or have not been policed in terms of the works being retained or maintained over time, there are no extenuating circumstances which justify not imposing the conditions in an endeavour to achieve safe road designs. The conditions sought by the Council requiring the turning circles, and the appropriate design

of them, are imposed accordingly, noting they were agreed by the applicant should I require the turning circles to be provided.

- 151 Finally, it was agreed that the temporary detention basin land is a specifically defined permissible use in the RE1 zone. There is no environmental reason why the basin cannot be constructed in the location proposed and it is therefore also not a basis to refuse the application.
- 152 Further, when the regional drainage is constructed, and assuming that the basin is therefore no longer required, once the Council acquires the RE1 land, development can occur within or adjacent to the location of the basin to extend the shared path or remove the retaining walls and undertake adjustments as required to this shared path along Road 3 which will, by then, be a public road providing direct public access to public open space.
- 153 The proposed conditions associated with the construction of this basin, agreed by the parties should I not require its relocation to Lot 14, are imposed accordingly, and any conditions referencing the basin's relocation removed.

Orders

154 The orders of the Court are:

- (1) Leave is granted to amend the application.
- (2) The applicant is to pay the respondent's costs thrown away as a result of the amendments pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979* as agreed or assessed.
- (3) The appeal is upheld.
- (4) Development Application DA-18-01705, for demolition of existing structures, subdivision, and construction of attached dwellings, with associated works, is approved subject to the conditions in Annexure 'A'.
- (5) The exhibits are returned with the exception of Exhibits A, D and R.

.....

Jenny Smithson

Commissioner of the Court

Annexure A (296 KB)

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Annexure 'A'

Celesteem Rouse Hill Development Pty Ltd v Blacktown City Council

Conditions of Consent

0 Deferred Commencement Conditions

0.1 This Development Consent is not to operate until such time as the Voluntary Planning Agreement (VPA) for off-site water quality treatment has been entered into in terms of the offer made by the developer on 13 January 2020.

0.2 Amended drainage and civil plans from Samana Blue, File Ref. 2019026 Rev H (apart from drawing C22 which is Revision I) must address the following to the satisfaction of the Manager Asset Design;

- i. Revise the trunk drainage line within Road 2. Ensure the starting downstream 10% AEP HGL at pit 2-2 allows for the backwater from the Rocla CDS diversion weir. Set the HGL for the 10% AEP flow and allow for a weir height of 500mm and a weir length of 1.8m. Where the existing 1200 x 600 box cannot carry the required flow a supplementary drainage system may be required. Review HGL on pipe long-sections.
- ii. Provide detail of the tail-out drains from the southern swale and the subsoil collection pit ensuring no impact on the ENV land.
- iii. On drawing C03 accurately locate the position of the RE1 boundary. Apply this on all relevant plans.
- iv. On drawing C04 show calculations for the southern swale at the critical location at Road 3. Allow for the net gap between the retaining walls and show grades. Allow for the width of the treated timber or concrete retaining walls with supporting posts in calculating net flow widths.
- v. Set the habitable floor levels of lots 9-14 on relevant engineering plans, a minimum of 0.3m above the 1 in 100 years water level adjacent to the trapped low point at pit 4/2.
- vi. Redesign the kerb long-section for Road 2 to a maximum ponding depth of 200mm in the 100 year flow at the sag.
- vii. On drawings C04 and C05 amend the bulk earthworks layout to show a minimum 1% fall from front to back of each lot and a pad level that allows for a finished habitable floor level a minimum of 225 mm above finished ground level.
- viii. On drawing C05 Section A show the top of the concrete footing for the temporary retaining walls positioned at the base of the swale (reversed) to allow for easy removal from under roads and private property.
- ix. On drawing C18 hydraulically review the size of the box culvert from 4/2 to 1/3 to carry the 10% AEP flows at the flatter 0.1% grade and widen as required.

- x. On drawing C21 amend the layout to show a minimum 1% fall from front to back of each lot and a finished habitable floor level a minimum of 225 mm above finished ground level.
 - xi. On drawing C22 provide general bio-retention details as follows.
 - a) Provide a sediment trap at all outlets to the bio basin. Sediment trap to be the width of the pipe or culvert and twice as long and a minimum of 400 mm deep.
 - b) Subsoil pipes are slotted PVC with no sock laid at 0.5%. Provide a sealed subsoil collection pit and connect each subsoil line individually to the pit.
 - c) Connect subsoil pipes to the collector pipes at 45 degrees.
 - d) Provide an impermeable liner.
 - e) Drainage layer to be 5-7 mm gravel. Increase depth to 200 mm minimum.
 - f) Revised drainage plans are required to show how the filter media can be protected once the subdivision is completed, but allowing partial treatment during construction of the residences. The final transition layer and filter media is not to be installed and instead geotextile is to be placed over the top of the gravel layer followed by 150 mm of coarse sand or temporary filter media and washed turf.
 - g) Show a 3.5m wide vehicular maintenance access track down to the bio-retention filter area.
 - h) Provide a sump sediment trap at all inlets into the temporary bio retention basin. Sumps to be the width of the pipe or culvert and twice as long and 400mm deep with appropriate sump release drainage below.
 - xii. On all pipe long-sections show the ultimate design flows and reference the ARI.
 - xiii. On drawing C26 Line 3 show a 675 mm pipe from 1-3 to 2-2.
 - xiv. On drawing C26 show a 675 mm pipe from 1-3 to 2-2.
 - xv. On drawing C27 show stormwater line long-section from 4-2 to 1-3 and onto outlet.
 - xvi. A Restoration Plan is required to show the ultimate removal of the temporary bio-retention system and outlet pipes, removal of the retaining walls up to the limit of the ENV in conjunction with 1V:5H fill batters and removal of any temporary drainage infrastructure together with associated restoration.
- 0.3 Pay to Council a fee of \$1,576.00 incl GST (8 hrs Goods and Services Item 5.2.7) for the Manager Asset Design's team to assess the deferred drainage details. Where payment is made after 30 June then the fees will increase in accordance with the Goods and Services Schedule. Send a copy of the receipt to floodadvice@blackton.nsw.gov.au. Where the submission is unsatisfactory an additional fee is required for each revision.
- 0.4 All of the requirements listed in the above condition must be completed within 24 months of the date of this "Deferred Commencement" consent. Should these matters not be completed to Council's satisfaction within this time period, this "Deferred Commencement" consent will lapse.

1 ADVISORY NOTES

1.1 Terminology

- 1.1.1 Any reference in this document to a "consent" means a "development consent" defined in the Environmental Planning and Assessment Act 1979.
- 1.1.2 Any reference in this consent to a Construction, Subdivision Works, Compliance, Occupation or Subdivision Certificate is a reference to a certificate as defined by Part 6 of the Environmental Planning and Assessment Act 1979.
- 1.1.3 Any reference to a given lot number in this consent is, except whether a contrary intention is indicated, a reference to the lot number as identified on the architectural plans.

1.2 Scope of Consent

- 1.2.1 The granting of this consent does not imply or confer compliance with the requirements of the Disability Discrimination Act 1992. The applicant is advised to investigate any liability that may apply under that Act. The current suite of Australian Standard 1428 - Design for Access and Mobility, should be consulted for guidance. The prescriptive requirements of Part 1 of the Standard apply to certain buildings requiring development consent.

1.3 Other Approvals

- 1.3.1 A separate valid Construction Certificate and Subdivision Works Certificate shall be issued prior to commencement of any construction works for building work and subdivision work respectively.
- 1.3.2 The applicant's attention is drawn to the need to obtain separate appropriate approval for any ancillary development not approved by this consent, including:
 - (a) the removal of any tree(s) not indicated on the approved plans, and
 - (b) any fence, retaining wall, land excavation or filling, advertising structure or other development not being exempt development.
- 1.3.3 The applicant's attention is drawn to the need to obtain Council's separate approval for any ancillary activity not approved by this consent, including:
 - (a) the installation of a caravan, temporary structure, stormwater drainage in a public place, amusement device or other activity not being an exempt activity under Council's Local Approvals Policy adopted under the provisions of the Local Government Act 1993,
 - (b) the installation of a vehicular footway crossing servicing the development.

1.4 Consent Duration

- 1.4.1 This consent will lapse five years from the date it operates.

1.5 Services

1.5.1 The applicant is advised to consult with:

- (a) Sydney Water Corporation Limited
- (b) Recognised energy provider
- (c) Natural Gas Company
- (d) The relevant local telecommunications carrier

regarding any requirements for the provision of services to the development and the location of existing services that may be affected by proposed works, either on the land or on the adjacent public road(s).

All approved building construction plans attached to the Construction Certificate should be submitted to Sydney Water Tap In, to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements and if further requirements need to be met. The plans are to be appropriately stamped and all amended plans will require re-stamping. For further information go to: www.sydneywater.com.au, then follow the "Developing Your Land" link or telephone 1300 082 746 for assistance.

Sydney Water may also require the applicant to obtain a Trade Waste Approval as part of the operation of the approved development. Enquiries should be made to ascertain the Sydney Water requirements for the eventual operation of the approved use.

1.5.2 Prior to any demolition works, all services or utilities should be disconnected in consultation with the relevant service provider.

1.5.3 Underground assets may exist in the area that is subject to your application. In the interests of health, safety, and in order to protect damage to third party assets, please contact Dial Before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (this is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset holders a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.

1.5.4 Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number: 1800 810 443.

1.5.5 The developer shall be responsible for all public utility adjustment/relocation works, necessitated by the above work and as required by the various public utility authorities and/or their agents.

1.6 Tree Planting and Service Locations (After all other services)

- 1.6.1 Street tree planting must not impact on public utilities. The applicant should liaise with the relevant service authorities on the location and use of services within the public road reserve. These authorities may be able to lay their services on the opposite side of the road, thereby providing larger areas for tree planting.

Street tree planting must not interfere with street light spill. The applicant is to provide documentation to confirm there is no conflict between proposed vegetation at maturity and street lighting. This confirmation must be received before a Construction Certificate can be issued.

1.7 Identification Survey

- 1.7.1 The applicant must obtain an identification survey from a registered surveyor to ascertain the correct location of the property boundaries, and to ensure the development does not encroach upon adjoining properties.

1.8 Engineering Notes

- 1.8.1 Any Construction Certificate covering Engineering Works must include and address the following:

- Design of specified Engineering Works as required by this consent.
- Any ancillary works necessary to make the construction effective.

If both Building and Engineering works are required, separate certificates can be issued for the following works:

- Construction Certificate for Building Works
- Subdivision Works Certificate for Engineering Works (As nominated in the 'Prior to Subdivision Works Certificate' section of the consent).

Works which require approval under the *Roads Act 1993* or *Local Government Act 1993* CAN NOT be privately certified. Examples of these works are, but not limited to:

- Works in public areas (i.e. Road Reserve, Public Reserves)
- Inter-allotment drainage (i.e. drainage outside the boundary of the land being developed).

- 1.8.2 All works requiring approval under the *Roads Act 1993* or *Local Government Act 1993* must be approved PRIOR to the issue of any Construction Certificate or Subdivision Works Certificate that is for such works.

1.9 Payment of Engineering Fees

- 1.9.1 If the applicant wishes for Council to issue the Subdivision Works Certificate for Engineering Works (As nominated in the 'Prior to Subdivision Works Certificate') the applicant must:

- Complete the relevant application form
- Submit all relevant plans produced by a suitably qualified person and in

accordance with Council's Standards.

1.9.2 If the applicant wishes for Council to undertake Construction inspections and issue a Compliance Certificate for engineering works, the applicant must:

- Complete the relevant application form
- Submit all relevant plans produced by a suitably qualified person
- If plans are privately certified, applicant must supply a Subdivision Works Certificate covering the required works.

1.10 **Other Matters.**

1.10.1 This plan of subdivision is not to be released until Public Road access is provided. This may require the registration of the adjoining subdivision.

2 **GENERAL**

2.1 **Scope of Consent**

2.1.1 This consent relates to the following drawings/details submitted to Council with the Development Application, subject to compliance with any other conditions of this consent:

Drawing No.	Prepared by	Dated
DA0.02.3 Demolition Plan Rev. E	KannFinch	08/10/2019
DA1.03 Subdivision Plan Rev. J	KannFinch	08/10/2019
DA1.04.01 Master Plan – ENV Rev. G	KannFinch	08/10/2019
DA1.04.02 Masterplan – Staging Rev. B	KannFinch	08/10/2019
DA3.01 Ground Floor Rev. P	KannFinch	08/10/2019
DA3.02 Level 1 Floor Plan Rev. M	KannFinch	08/10/2019
DA3.03 Roof Plan Rev. L	KannFinch	08/10/2019
DA3.04 Floor Plan Rev. P	KannFinch	08/10/2019
DA3.04.01 Floor Plans Rev. E	KannFinch	08/10/2019
DA3.05 Floor Plans Rev. P	KannFinch	08/10/2019
DA3.06 Floor Plans Rev. P	KannFinch	08/10/2019
DA3.07 Floor Plans Rev. Q	KannFinch	24/02/2020
DA3.08 Floor Plans Rev. P	KannFinch	08/10/2019
DA3.09 Floor Plans Rev. P	KannFinch	08/10/2019
DA5.01 Sections Rev. L	KannFinch	08/10/2019
DA5.02 Sections Rev. L	KannFinch	08/10/2019
DA6.01 Elevations Rev. N	KannFinch	08/10/2019
DA6.02 Elevations Rev. N	KannFinch	08/10/2019
DA6.03 Elevations Rev. N	KannFinch	08/10/2019
DA6.05 Elevations Rev. P	KannFinch	24/02/2020
DA10.01 Subdivision Plan – Interim Rev. B	KannFinch	08/10/2019
DA9.01 Material Board Rev. H	KannFinch	08/10/2019
DA10.02 Master Plan – Interim Rev B	KannFinch	08/10/2019
Subdivision Plans		
Plan of proposed subdivision of Lot 132 in DP 208203 Ref: 05617_DP (Stage) Stage 3	John Thomas	18/02/2020

Plan of proposed subdivision of Lot 2 & 3 In DP Ref: 05617_DP (Stage) Stage 4		John Thomas	18/02/2020
Landscape plans			
DWG No: 001 Landscape Masterplan Issue: D	Site Image Landscape Architects	09.10.2019	
DWG No: 101 Landscape Plan Issue: D	Site Image Landscape Architects	09.10.2019	
DWG No: 102 Landscape Plan Issue: D	Site Image Landscape Architects	09.10.2019	
DWG No: 501 Landscape Details & Planting Schedule Issue: C	Site Image Landscape Architects	09.10.2019	

2.2 Development Description

- 2.2.1 Staged development, including residue lot subdivision, associated roads, infrastructure works, bulk earthworks and construction and subdivision of 43 attached dwellings which include landscaping and all other associated works.

2.3 Staging of consent

- 2.3.1 Stage 1 – Demolition of existing structures and removal of all asbestos and investigatory work (phase 2 site contamination and any remediation works identified in this investigation).

Stage 2 – Civil works including removal of dam, bulk earthworks, construction of roads and associated drainage infrastructure

Stage 3 – Construction and subdivision of 16 dwellings on proposed lots 5 to 20 (on 'Plan of Proposed Subdivision of Lot 132 in DP 208203' – Stage 3), create residue lots 1, 2 and 3 (and a further single residue lot comprising the land identified as being for the southern lots, ie proposed lots 4 and 21 in that plan of subdivision) for further stages and dedication of roads (including the triangular portion of road marked 'C' in the end of the Terry Road cul-de-sac).

Stage 4 – Construction of 22 dwellings on residue lots 2 and 3 to create proposed lots 23 to 39 (being the 'lot 39' that is identified as being 196sqm) and proposed lots 41-46 (on 'Plan of Proposed Subdivision of Lot 2 & 3 in DP' – Stage 4) and a further single residue lot comprising the land identified as being for the southern lots, ie proposed lots 22, 39 (ie the 'lot 39' that is identified as being 199sqm) and 40 in the plan of subdivision)

Stage 5 – Construction and subdivision of 5 lots on the southern lots, being proposed lots 4 and 21 (on 'Plan of Proposed Subdivision of Lot 132 in DP 208203' – Stage 3) and lots 22, 39 (ie the 'lot 39' that is identified as being 199sqm) and 40 (on 'Plan of Proposed Subdivision of Lot 2 & 3 in DP' – Stage 4).

2.4 Services

- 2.4.1 Low voltage electricity and telecommunications services for the approved development shall be reticulated underground.

2.5 Suburb Name

- 2.5.1 The land the subject of this consent is known to be located in the following suburb. This suburb name shall be used for all correspondence and property transactions:

Suburb: Rouse Hill

- 2.5.2 Any advertising of land sales in association with the approved development shall clearly indicate that the development is located in the following suburb. No other estate names shall be used in any advertisements or other promotional information:

Suburb: Rouse Hill

2.6 Other Matters

- 2.6.1 No construction preparatory work (including tree or vegetation removal, ground clearing, excavation, filling, and the like) shall be undertaken on the land prior to a valid Subdivision Works Certificate being issued for the subdivision works.
- 2.6.2 Any future substation, temporary drainage works or other utility installation required to service the approved subdivision/development shall not be sited on future or existing Council land, including road reservations and/or public reserves.

2.7 Engineering Matters

2.7.1 Design and Works Specification

- 2.7.1.1 All engineering works required by this consent must be designed and undertaken in accordance with the relevant aspects of the following documents except as otherwise authorised by this consent:

- a) Blacktown City Council's Works Specification - Civil (Current Version)
- b) Blacktown City Council's Engineering Guide for Development (Current Version)
- c) Blacktown City Council Development Control Plan (Current Version) including Part J – Water Sensitive Urban Design and Integrated Water Cycle Management
- d) Blacktown City Council Growth Centre Precincts Development Control Plan
- e) Blacktown City Council On Site Detention General Guidelines, S3QM online tool and standard drawing A(BS)175M.

Design plans, calculations and other supporting documentations prepared in accordance with the above requirements **MUST** be submitted to Council with any application for a Subdivision Works Certificate, *Road Act 1993* or *Local Government Act 1993* approval.

Any Subdivision Works Certificates issued by Private Certifiers must also be accompanied by the above documents.

NOTE: Any variations from these design requirements must be separately approved by Council.

- 2.7.1.2 The Applicant is required to submit to Council, Bonds and/or cash contributions for works associated with the development in conjunction with the civil engineering works required to be constructed as part of this development. Works may include:

- Path Paving construction
- Final Layer Asphaltic Concrete (AC) construction

- Maintenance of the construction works
- Removal of temporary infrastructure
- Maintenance of Temporary water quality and quantity devices.

These matters will be individually addressed within the consent.

- 2.7.1.3 Prior to release of any bond securities held by Council for civil engineering works, the payment of a bond release inspection fee in accordance with Council's Goods and Services Pricing Schedule must be made.

2.7.2 Other Necessary Approvals

- 2.7.2.1 A separate application will be required for the following approvals, under the *Local Government Act 1993* and/or the *Roads Act 1993*.

- Vehicular Crossing
- Works on or occupation of existing public roads (Not including works covered by a Roads Act Approval).

2.7.3 Subdivision

- 2.7.3.1 Blacktown City Council shall be the Principal Certifying Authority for the proposed subdivision and shall issue a Subdivision Certificate for each stage upon compliance with all conditions of this consent relevant to those stages.

2.8 Other Matters

- 2.8.1 No construction preparatory work (such as excavation, filling, and the like) shall be undertaken on the land prior to a valid Subdivision Works Certificate being issued for the construction works.
- 2.8.2 Any future substation, temporary drainage works or other utility installation required to service the approved subdivision/development shall not be sited on Council land, including road reservations and/or public reserves except as approved by this consent.

3 PRIOR TO DEMOLITION WORKS

3.1 Safety/Health/Amenity

- 3.1.1 Security fencing shall be provided around the perimeter of the demolition site to prevent unauthorised entry to the site. Notices complying with AS 1319-1994 and displaying the words "DANGER - DEMOLITION IN PROGRESS", or similar message shall be fixed to the fencing at appropriate places to warn the public.
- 3.1.2 A sign shall be erected in a prominent position on the land indicating the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.
- 3.1.3 Should the demolition work:
- (a) be likely to be a danger to pedestrians in a public place or occupants of any adjoining land or place,

- (b) be likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
- (c) involve the enclosure of a public place,

a hoarding or protective barrier shall be erected between the work site and the public place or adjoining land or place. Such hoarding or barrier shall be designed and erected in accordance with Council's current Local Approvals Policy under the Local Government Act 1993.

Where necessary, an awning shall be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place or adjoining land or place.

The hoarding, awning or protective barrier shall be effectively illuminated between sunset and sunrise where it may be hazardous to any person in the public place.

- 3.1.4 Toilet facilities shall be provided on the land at the rate of 1 toilet for every 20 persons or part thereof employed at the site.

Each toilet provided shall be:

- (a) a standard flushing toilet, and
- (b) connected:
 - (i) to a public sewer, or
 - (ii) if connection to a public sewer is not practicable, to an accredited sewage management facility provided 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 Council.

- 3.1.5 Soil erosion and sediment control measures shall be provided in accordance with Council's Soil Erosion and Sediment Control Policy.

3.2 Other Matters

- 3.2.1 The Applicant is to advise all adjoining neighbours, and those located opposite the subject development site, by letter, of their intention to commence demolition work. The letter shall be distributed at least 2 days prior to the intended work and include the following information:

- date/s, hours and duration of the works.
- contact name and phone number of the applicant
- contact name and phone number of the licensed demolisher
- SafeWork NSW contact number 131050, and email address
- contact@safework.nsw.gov.au

4 DURING DEMOLITION WORKS

4.1 Safety/Health/Amenity

- 4.1.1 Security fencing shall be maintained around the perimeter of the demolition site to

prevent unauthorised entry to the site at all times during the demolition works. Notices lettered in accordance with AS 1319-1994 and displaying the words "DANGER - DEMOLITION IN PROGRESS", or similar message shall be maintained on the fencing at appropriate places to warn the public.

- 4.1.2 A sign shall be maintained in a prominent position on the land indicating the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.
- 4.1.3 Any hoarding or protective barrier required to be erected between the work site and the public place on adjoining land or place shall be maintained in an effective condition.
- 4.1.4 The required toilet facilities shall be maintained on the land at the rate of 1 toilet for every 20 persons or part of 20 persons employed at the site.
- 4.1.5 Soil erosion and sediment control measures shall be maintained in accordance with Council's Soil Erosion and Sediment Control Policy.
- 4.1.6 Any excavation and/or backfilling associated with the demolition works shall be executed safely and in accordance with appropriate professional standards, with any excavation properly guarded and protected to prevent them from being dangerous to life or property.
- 4.1.7 All demolition work and handling of materials shall be in accordance with Australian Standard 2601-2001 (Demolition of Structures) and all applicable SafeWork NSW requirements including the Code of Practice for the Safe Removal of Asbestos" – National Occupational Health and Safety Commission:2005 (if applicable)
- 4.1.8 All plant and equipment used on the land shall be operated by a competent person. Cranes used for hoisting and lowering of materials shall comply with AS 1418.1 and AS 1418.5 and be fitted with a load indicator and hoist limited device.

4.2 Nuisance Control

- 4.2.1 Any noise generated during demolition shall not exceed those limits specified in the Protection of the Environment Operations Act 1997 and shall be limited to between 7.00am and 6.00pm, Monday to Friday, and 8.00am to 1.00pm, Saturday, with no demolition work being undertaken on Sundays or public holidays.

5.0 PRIOR TO SUBDIVISION WORKS CERTIFICATE (GENERAL)

5.1 DA Plan Consistency

- 5.1.1 A Subdivision Works Certificate or Construction Certificate for any part of the proposed development shall only be issued when the accompanying plans, specifications and/or details are consistent with the approved Development Application design plans for that part (as modified by the conditions of this development consent).

6.0 PRIOR TO SUBDIVISION WORKS CERTIFICATE (ENGINEERING)

6.1 General

6.1.1 All relevant conditions within the 'Prior to the Subdivision Works Certificate' section of this consent shall be satisfied before the relevant Subdivision Works Certificate can be issued.

6.1.2 The engineering drawings listed in this condition are not for construction. The Subdivision Works Certificate drawings shall be generally in accordance with the approved drawings and conditions of consent. Any significant variation to the design shall require a section 4.55 or section 4.56 application

Prepared By	Project No.	Drawing No.	Revision	Dated
Samana Blue Engineering	2019026	C00-C40	H	05/02/2020
Samana Blue Engineering	2019026	C22	I	undated

The following items are required to be addressed on the Subdivision Works Certificate plans for Stage 2:

- i. Provide details of the smooth horizontal transition of Road 3 to existing roads for the road design speed.
- ii. Realign lot layouts to comply with the above criteria
- iii. Provide details of temporary turning heads including smooth transitions at the kerb such as fillet infill to facilitate safe turning for vehicles and appropriate drainage. Pavement on the verge turning area shall be a minimum 150 compacted DGB with 25mm AC surface. Ensure drainage pits or street lights are not located within the turning area.
- iv. Provide suitable traffic safety barriers at temporary turning heads adjacent retaining walls. Ensure all such barriers do not impinge on the turning area or manoeuvrability of the design vehicle.
- v. Provide details of the full connection of the future extension of the Roads 1, 3 and 4 including demolition/removal of the retaining walls with the road and adjoining property.
- vi. Details of the discharge outlet of the channel on the southern boundary.
- vii. Barrier kerb to be installed on Road 2 southern side. Barrier kerb to be installed both sides on all other new roads.

6.2 Subdivision Works Certificate Requirements

6.2.1 Under the *Environmental Planning and Assessment Act 1979* a Subdivision Works Certificate for subdivision work is required. These works include but are not limited to the following:

- Road and drainage construction
- Water quality treatment
- Earthworks and Retaining walls
- Inter-allotment drainage (created within the subject lot)
- Path Paving (within a future public road).

The above requirements are further outlined in this section of the consent.

6.3 Roads Act Requirements

6.3.1 Under *Section 138 of the Roads Act 1993* an approval for engineering work within an existing public road is required. These works include but are not limited to the following:

- Any works within Council's road reserve
- Half width road construction
- Kerb inlet pit connections or construction
- Vehicular crossings
- Path Paving

The above requirements are further outlined in this section of the consent.

6.4 Other Engineering Requirements

- 6.4.1 If the estimated cost of works is \$25,000 or greater then proof of long service levy payment is required.
- 6.4.2 Any ancillary works undertaken shall be at no cost to Council.
- 6.4.3 The Applicant must submit to the Council written evidence from Sydney Water indicating compliance with all necessary requirements.
- 6.4.4 All street name poles, light poles and bus shelters shall be black powder coated in accordance with Blacktown City Council's Engineering Guide for Development. Ensure this is noted on the construction plans.
- 6.4.5 The Applicant must submit to the Council a Public Utilities Plan demonstrating adequate clearance between services to stormwater pits, pipes, driveways, light poles and the like.
- 6.4.6 All aerial utilities on the Terry Road frontage of the site, including any necessary works adjacent to the site to facilitate this requirement, are to be relocated underground to the satisfaction of the relevant utility provider.
- 6.4.7 A Road Safety Audit (RSA) shall be undertaken on the road design by a suitably qualified and experienced RMS accredited auditor. The RSA shall have an emphasis on temporary turning heads and roads with proximity to retaining walls and/or any other non-standard structures within or adjacent to the road reserve. The recommendations of the RSA shall be incorporated into the approved Subdivision Works Certificate plans for Stage 2.

6.5 Roads

- 6.5.1 The Applicant must submit to the Council a pavement report prepared and designed by a professional civil engineer with soil tests carried out by a registered NATA soils laboratory. The pavement design shall withstand the traffic loadings listed in this consent.
- 6.5.2 The Applicant must submit to the Council a traffic management plan (TMP) including but not limited to a Traffic Control Plan (TCP) and Pedestrian Management Plan, for any works within public road reserves. The TCP shall be approved, signed and dated by a person who holds a current Roads and Maritime Services (RMS) Work Zone Traffic Management Plan accreditation and photo card.
- 6.5.3 Any approved design drawings must show a 5m x 5m splay for residential allotments at each street intersection.

6.5.4 Splays are to be adjusted to meet site specific intersection designs in accordance with Council's Engineering Guide for Development.

6.5.5 Proposed new roads shall be designed and constructed as follows:

Name	Width (m)	Length (m)	Formation (m)	Traffic Loading N(E.S.A)
Road 1	18	75	3.5-11.0-3.5	5x10 ⁵
Road 2	17 (half)	200	5.5-3.5	5x10 ⁵
Road 3	18	75	3.5-11.0-3.5	5x10 ⁵
Road 4	18	75	3.5-11.0-3.5	5x10 ⁵

6.5.6 Existing roads shall be designed and constructed as follows:

Name	Width (m)	Length (m)	Formation (m)	Traffic Loading N(E.S.A)
Terry Road	20(half)	75	4.5-5.5 (var)	5x10 ⁵

The following items are required to be addressed on the Subdivision Works Certificate plans:

- i. Provide a cul-de-sac at the southern end of Terry Road
- ii. Pavement works to include all necessary transition works between new and existing pavement to ensure a safe road environment.

6.6 Drainage

6.6.1 Provide inter-allotment drainage lines for lots that do not drain directly to a public road. The design shall include pipeline long-sections and identify location and levels of services.

6.6.2 Foundations adjacent to easements shall not place a loading on the pipe within the easement. Foundations shall be located at:

- (a) the depth of the invert of the existing pipeline, and/or
- (b) the depth of the invert of the proposed pipeline.

All developments shall be kept clear of drainage easements. The surface levels within the easement are not to be changed unless required to convey overland stormwater runoff.

6.6.3 Any overland or stormwater flows must be intercepted at the property boundary, conveyed through the site in a piped or channelled drainage system and discharged in a satisfactory manner.

6.6.4 Provide a roof water outlet to kerb for each proposed lot that drains to the street.

6.7 Erosion and Sediment Control

6.7.1 Provide a sediment and erosion control plan in accordance with Council's Engineering Guide for Development.

6.8 Earthworks

- 6.8.1 Batters are not to exceed a grade of 1V:5H within existing or future Council land and are to be stabilised with topsoil, turf and vegetation.
- 6.8.2 Finished levels of all internal works at the road boundary of the property must be 4% above the top of kerb.
- 6.8.3 Retaining walls shall be a maximum single height of 1.2m (600mm cut + 600mm fill). Where a retaining wall is proposed that is more than 1.2m in height, a terraced solution shall be provided unless designed by a structural engineer to a design outcome satisfactory to Council. Terraces should not exceed 900mm in height (each). Note that the lower terrace is to be inside the lower lot, and the upper terrace on the boundary. Terraces should have a minimum separation distance equal to the height of the terrace. Retaining walls shall be of masonry construction.
- 6.9 **Stormwater Quality Control**
 - 6.9.1 The stormwater quality treatment system shall be designed in accordance with Council's Engineering Guide for Development and Development Control Plan Part J – Water Sensitive Urban Design and Integrated Water Cycle Management.
 - 6.9.2 The engineering drawings approved under this consent are not to be used for construction. Each Subdivision Works Certificate shall be generally in accordance with the approved DA plans and these development consent conditions however any significant variation to the water quality treatment design shall require a section 4.55 or section 4.56 application.
 - 6.9.3 Provide a maintenance schedule for the stormwater quality device that is signed and dated by the designer and in accordance with the Council's *WSUD Inspection and Maintenance Guidelines*.
 - 6.9.4 The water quality treatment measures within the RE1 land are not to be removed until the downstream regional water quality measures are completed and any disturbed area restored. Once the regional water measures are operational the temporary basin is to be removed and the RE1 land restored within 6 months of practical completion of the regional facilities. It is only then can the positive covenants be lifted.
 - 6.9.5 Each year before 1 September the registered proprietor is to provide to Council's Asset Design Services Section a report outlining all maintenance undertaken on the Stormwater Quality Improvement Devices in accordance with the approved maintenance schedule. All material removed are to be disposed of in an approved manner. Copies are to be provided of all contractor's cleaning reports or certificates to Council's WSUD Compliance Officer.
 - 6.9.6 The temporary protection measures for the bioretention area are not to be removed, nor the filter area of the basin planted out, until a minimum of 90% of the upstream catchment draining to the basin is fully developed including landscaping as agreed with Council. Once 90% of the upstream catchment is developed as determined by the developer or where notified by Council, the bioretention basins must be completed within six (6) months.
 - 6.9.7 The Bioretention Construction Security is not to be released until:

i) Practical completion of the bioretention basin. Practical Completion is defined as removal of any temporary protection measures, installation of the transition layer, filter media and planting out of the basin; and

ii) A Geotechnical Engineer has undertaken insitu Saturated Hydraulic Conductivity Testing of the bioretention system in accordance with Practise Note 1 of the FAWB guidelines. Test points are to be spatially distributed. Where the hydraulic conductivity of the soil differs from the rate specified in MUSIC of 100 mm/hr (tolerance -0% to + 400%), remediation works will be required over the whole filter area to restore the conductivity and the test repeated in different locations until the hydraulic conductivity is achieved. A Geotechnical Engineer is to then certify that in accordance with Practise Note 1 of the FAWB guidelines, the Saturated Hydraulic Conductivity is within tolerance to the rate specified in MUSIC for the bioretention system; and

iii) After the hydraulic conductivity has been certified by the Geotechnical Engineer, a Horticulturalist that has relevant tertiary qualifications and technical knowledge with a minimum of five (5) years demonstrated experience is to certify that the planting within the bioretention area including bank areas, is of the same quality in type and quantity as per the construction certificate approved landscape plans, that any plants lost have been replaced, the area is free of rubbish and that any areas of scour or disrepair have been restored.

6.10 Drainage Section Requirements

6.10.1 A Civil Engineer registered with NER is to certify that the maximum depth of gutter flow is 200mm in the critical 100yr storm.

6.10.2 Provide a Bioretention Construction Cost Estimate for the removal and disposal of the temporary protection measures for the bioretention areas, replacement with the transition layer, 400 mm filter media, the cost of undertaking hydraulic conductivity testing on the filter media in the basin and planting of appropriate species and plant certification.

6.10.3 Revised Landscape plans are required in accordance with the Council's WSUD Standard Drawings A(BS)175M Sheet 12 that include appropriate species for the bioretention system. Planting within the filter area should incorporate several growth forms, including shrubs and tufted plants and be densely planted (tufted plants at a minimum of 10 plants per square metre) to ensure plant roots occupy all parts of the media. To ensure diversity and disease resistance a minimum of 8 different species is required to be planted as a matrix. No mulch is permitted over the bioretention however jutemat is accepted.

6.10.4 Amended drainage and civil plans from Samana Blue, File Ref. 2019026 Rev H (apart from drawing C22 which is Revision I) must address the following;

- i. Provide Floodway Warning Signs for the bioretention systems in accordance with Plan A(BS)114S from Council's Engineering Guide for Development 2005.
- ii. Provide a detail of a subsoil riser for flushing and maintenance of the subsoil collection pipe. The riser is to include two 45° bends with a short section of un-

slotted straight (minimum 300 mm) in between. The vertical riser is to be sealed with a removable screw cap.

- 6.10.5 Prior to the issue of the subdivision works certificate, evidence is to be provided to Council that all monies required under the VPA for offsite water quality treatment under Council Policy 00520 have been paid to the Council.
- 6.10.6 The Applicant must provide a landscape plan for the restoration of the RE1 land when the temporary bioretention basin is removed.
- 6.10.7 The Applicant must provide a Restoration Plan Cost Estimate to cover the ultimate removal of the temporary bioretention system and outlet pipes from the RE1 land, removal of the retaining walls up to the limit of the ENV in conjunction with replacement 1V:5H fill batters and removal of any temporary drainage infrastructure together with associated restoration, plus landscaping restoration of the RE1 land.

6.11 Vehicular Crossings

- 6.11.1 Provide a commercial vehicular crossing to Council's standard A(BS)103S for each temporary road at the connection with an existing or proposed public road.

6.12 Footpaths

- 6.12.1 Construct path paving as follows:

Street Name	Side	Paving Width	Length
Road 1	Both	1.5m	Full Length
Road 2	Southern	2.5m	Full Length
Road 3	Both	2.5m west 1.5m east	Full Length
Road 4	Both	1.5m	Full Length
Terry Road	Western	1.5m	Full Length

- 6.12.2 The construction of path paving is to be provided generally in accordance with Council's Path Paving Policy, Blacktown City Council Engineering Guide for Development and Blacktown City Council Growth Centre Precincts Development Control Plan 2018.

7 PRIOR TO SUBDIVISION WORKS CERTIFICATE OR CONSTRUCTION CERTIFICATE (GENERAL)

7.1 DA Plan Consistency

- 7.1.1 A Construction Certificate for any part of the proposed development shall only be issued when the accompanying plans, specifications and/or details are consistent with the approved Development Application design plans (as modified by the development consent conditions).

7.2 Road Deposit/Bond

- 7.2.1 The following current fee (which is subject to periodic review and may vary at time

of payment) shall be lodged with Council prior to the issue of a Subdivision Works Certificate for Stage 2:

- (a) Road inspection fee of \$215;

Council will undertake initial and final inspection of civil assets outside the development site. The applicant will be held liable for any damage arising from construction activities. Council will undertake reinstatement works and recover the costs from the applicant in accordance with Council's current Goods & Services Pricing Schedule.

7.3 Retaining walls

- 7.3.1 All retaining walls are to be of masonry construction.
- 7.3.2 The Applicant is to install pedestrian barrier fences on top of retaining walls located in the RE1 area.
- 7.3.3 Pedestrian barrier fences must be of swimming pool fence construction with flat top and bottom rail with vertical pickets 1.8m high along the wall. The fence is to be powder coated "monument grey".
- 7.3.4 All structural engineering drawings and works must be certified by registered engineers.
- 7.3.5 Apply anti-graffiti coating to all exposed faces of the walls.
- 7.3.6 The applicant must submit an engineering plan detailing the proposed walls and pedestrian barrier fences for the approved subdivision prior to the issue of a Subdivision Works Certificate for Stage 2. The engineering plan must include:
 - a) cross section
 - b) elevation showing levels
 - c) detail and specification of the walls and materials.

This information must be received before a Subdivision Works Certificate for Stage 2 can be issued.

7.4 Undergrounding of Services

- 7.4.1 The principal certifier must be satisfied that the plans for the stage 2 subdivision works specify that all low voltage electricity and telecommunications services will be reticulated underground.

7.5 Substation

- 7.5.1 The principal certifying authority must be satisfied that any future substation or other utility installation required to service the approved subdivision shall not under any circumstances be sited on existing Council land, including road reservations and/or public reserves or on drainage zoned land or land that is to be dedicated as a public road under the 'Plan of Proposed Subdivision of Lot 132 in DP 208203' – Stage 3 or 'Plan of Proposed Subdivision of Lot 2 & 3 in DP'. Any proposal to locate a proposed substation or other utility installation on Council land shall be negotiated with and fully endorsed by the relevant Council Directorates.

7.6 Services/Utilities

- 7.6.1 The following documentary evidence shall accompany any Subdivision Works Certificate for stage 2:
- (a) A "Notification of Arrangement" Certificate from a recognised energy provider, stating that arrangements have been made with the service authority for electrical services, including the provision of street lighting, to the development.
 - (b) A written clearance from Telstra or any other recognised communication carrier, stating that services have been made available to the development or that arrangements have been made for the provision of services to the development.
- 7.6.1 Separate documentary evidence from Endeavour Energy shall be provided, prior to the issue of a Subdivision Works Certificate for stage 2 stating that the requirements of that Authority have been met with regard to the nearby high voltage transmission line.

7.7 Street tree planting

- 7.7.1 The applicant must submit a Street Tree Plan detailing the proposed street tree planting and landscaping for the approved subdivision prior to the issue of a Subdivision Works Certificate for Stage 2. The Street Tree Plan is to reflect the species palette in our Street Tree Guidelines and must include:
- a) cross-sections showing dimensions of tree pits
 - b) species
 - c) details of root protection barriers
 - d) soil specifications
 - e) location of tree pits in relation to services, intersections and future driveways, light poles, stormwater pits sewerage infrastructure and utilities

The Street Tree Plan must show how the developer can decommission any median feature and road verge landscaping, and reinstate landscaping suitable to Blacktown City at handover.

Landscaping to lot boundaries is to be wholly located within private property and not encroach upon the road reserve.

Street tree planting must not interfere with the street light spill. The applicant is to provide documentation to confirm there is no conflict between proposed vegetation at maturity and street lighting.

This information must be received before a Subdivision Works Certificate for stage 2 can be issued.

NOTE: Any tree planting to be undertaken as part of the approved development shall be available to Council for inclusion in future carbon sequestration programs.

7.8 Tree planting in RE1 area

- 7.8.1 The Applicant must install a row of endemic trees behind any retaining wall erected on the land zoned RE1 and provide a minimum 1.5m clearance from the wall. Trees will be planted at a minimum spacing of 8 metres.

- 7.8.2 The applicant must provide a landscape plan detailing the proposed tree planting and landscaping in the RE1 area for the approved subdivision prior to the issue of a Subdivision Works Certificate.

7.9 Elevated Walkway

- 7.9.1 The elevated walkway shall be of durable and perforated materials that allow light to the vegetation underneath the elevated walkway.
- 7.9.2 All structural engineering drawings and works must be certified by registered engineers.
- 7.9.3 The applicant must submit an engineering plan detailing the proposed elevated walkway for the approved subdivision prior to the issue of a Subdivision Works Certificate for Stage 2. The engineering plan must include:
- a) cross section
 - b) elevation
 - c) detail and specification of the structure and materials

This information must be received before a Subdivision Works Certificate for Stage 2 can be issued.

8 PRIOR TO SUBDIVISION WORKS CERTIFICATE FOR STAGE 2 (WASTE)

- 8.0.1 AutoCAD files must be provided in DWG format and 1:1 scale for the garbage trucks entire travel path to Council's satisfaction, in addition to the proposed swept path for review by Council's engineering consultant.
- 8.0.2 Temporary truck turning must be provided where the road network is staged/incomplete. This temporary turning head must be in the form of a cul-de-sac head. Hammerheads are not accepted. Trucks must be able to enter and exit in a forward direction. Design must be in accordance with the Councils' engineering guide for the development and cater for 11m long, heavy rigid vehicles with 25m turning circles. Evidence must be provided in the form of swept paths and AutoCAD files in DWG format and 1:1 scale for the trucks' entire travel path.
- 8.0.3 The applicant must update the waste management plan to Council's satisfaction to include:
- o number of bins allocated to each dwelling
 - o capacity of bins allocated to each dwelling
 - o collection point for each dwelling
 - o provision of a fortnightly recycling service in addition to the weekly garbage service.
- 8.0.4 The bin collection points must be indicated on the plans, to Council's satisfaction.
- 8.0.5 The removal of asbestos from the site and its transportation to its final destination is to be undertaken in accordance with the NSW Environment Protection Authority's WasteLocate online system for tracking asbestos waste. Upon completion of the transportation, the WasteLocate consignment number is to be submitted to Council. For more information, please refer to the following link:
<https://www.epa.nsw.gov.au/your-environment/waste/transporting-asbestos-waste-tyres>
- 8.0.6 The applicant must ensure that roads and driveways are rated suitable for 24 tonne trucks.

- 8.0.7 The applicant must ensure the approved bin collection points for all bins for the whole site are shown on the stamp approved plans to Council's satisfaction with each bin indicated.
- 8.0.8 Access for collection vehicles must be designed in accordance with the dimensions indicated on the approved architectural plans and vertical clearances (as per Australian Standards), showing adequate truck entry and exit and in all manoeuvring areas to Council's satisfaction. The AutoCAD files are still outstanding and need to be reviewed.
- 8.0.9 The applicant must ensure no plantings or landscaping is located where the bin collection points are as this will hinder safe and efficient collection of bins and bulky waste from the development.
- 8.0.10 An easement or public positive covenant to maintain safe truck access and turning around the site is required to Council's satisfaction at the frontage of lots 17, 18, 25, 26, 31, 32, 37, 38, 42, 43 as they adjoin the required temporary turning heads. These easements or public positive covenants can only be released, varied or modified by Council and must not be released, varied or modified until the surrounding road network is completed and waste collection vehicles can move around the site in a forward direction.

9 **PRIOR TO SUBDIVISION WORKS CERTIFICATE OR CONSTRUCTION CERTIFICATE (PLANNING)**

9.1 **Section 7.11 Contributions under Section 7.17 Directions**

9.1.1 Contributions under Section 7.11 of the Environmental Planning & Assessment Act 1979 must be paid.

Under the Section 7.17 Direction issued by the Minister for Planning on 4 March 2011, Council must not impose a condition of development consent under Sections 7.11 (1) or 7.11 (3) or the Act requiring the payment of a monetary contribution exceeding \$45,000 for each dwelling authorised by the development consent, or in the case of a development consent that authorises the subdivision of land into residential lots, exceeding \$45,000 for each residential lot authorised to be created by the development consent. The Section 7.11 contributions payable below have been assessed in accordance with this Direction:

No. of intended dwellings: 43

Total Contribution: \$1,935,000

Refer to condition 2.3 for staging for details about each stage.

Stage 3 : 16 dwellings

16 x 45,000 (excluding Lot 20 and Lot 26)

Contribution: \$720,000

Payment of this amount must be made prior to the issue of a Construction Certificate for the stage 3 building works (other than building works for Lot 20 and Lot 26).

Stage 4: 22 dwellings

22 x 45,000 (excluding Lot 32, Lot 38 and Lot 43)

Contribution \$990,000

Payment of this amount must be made prior to the issue of a Construction Certificate for the stage 4 building works (other than building works for Lot 32, Lot 38 and Lot 43)..

Stage 5: 5 dwellings

3 x 45,000 (for Lot 32, Lot 38 and Lot 43)

Contribution \$135,000

Payment of this amount must be made prior to the issue of a Construction Certificate for the stage 5 building works (for Lot 32, Lot 38 and Lot 43)

2 x 45,000 (Lot 20 and Lot 26) Contribution: \$90,000

Payment of this amount must be made prior to the issue of a Construction Certificate for the stage 5 building works (for Lot 20 and Lot 26).

The amounts below are the INDEXED contributions as at the date of this consent which, if not for the Ministerial Direction, would have applied to this consent. These amounts have been supplied for your information.

Contribution Item	Amount	Relevant C.P
i. <u>Stormwater Quantity</u>		CP22
Land	\$500,534.00	
Works	\$73,351.00	
ii. <u>Stormwater Quality</u>	\$104,510.00	CP22
iii. <u>Traffic Management</u>		CP22
Land	\$62,599.00	
Works	\$370,276.00	
iv. <u>Open Space</u>		CP22
Land	\$1,535,968.00	
Works	\$780,794.00	
v. <u>Community facilities</u>	\$80,243.00	CP22
vi. <u>Combined Precinct Facilities</u>		CP22
Community facilities - Land	\$10,755.00	
E2 Conservation Zone - Land	\$27,191.00	
E2 Conservation Zone - Works	\$9,668.00	
Total	\$3,555,889	

These contributions are based upon the following parameters as specified in the Contributions Plan.

Developable Area: 1.4781
Additional Population: 116.1

Copies of the following relevant Contributions Plan(s) may be inspected/purchased from Council's Customer Information Centre. Alternatively, Contributions Plans may be downloaded from Council's website:

S.7.11 CP No. 22

PLEASE NOTE: Payments must be made by BANK CHEQUE IF IMMEDIATE CLEARANCE IS REQUIRED. Payments of the full amount by credit card or EFTPOS are accepted. However, payments by credit card or EFTPOS over \$10,000.00 are levied a 3% surcharge on the whole amount and cannot be split between different credit or EFTPOS cards.

Notes In complying with the Minister's Section 7.17 Direction, the applicant is advised that Council may not be in a position to provide all of the facilities listed in the applicable contributions plan due to the potential shortfall of contributions to be received as a result of the \$40,000 per dwelling/lot limit.

9.2 Site contamination

9.2.1 The recommendations of the Preliminary Site Investigation prepared by eiaustralia dated 28 November 2017 (Report No. E23615.E01.Rev0) are to be followed and implemented.

9.2.2 Prior to the release of any construction certificate, an EPA recognised certified geoscientist is to validate the site as suitable for residential development in accordance with the strict residential use criteria as set out in the National

Environment Protection (Assessment of Site Contamination) Measure (NEPM) 1999 as amended 2013. If required, a Remediation Action Plan (RAP) is to be prepared for the site in accordance with Environment Protection Authority's Guidelines and relevant Australian Standards.

A copy of the Phase 2 report, RAP and validation report is to be submitted to Council.

9.3 **Acoustic impact**

- 9.3.1 The recommendations of the acoustic impact assessment prepared by Acoustic Logic dated 09/07/2018 are implemented as part of the plans and specifications for any relevant Construction Certificate for stages 3 and 4 . Note: Acoustic validation that the recommendations have been implemented is required prior to the release of an Occupation Certificate.

9.4 **General**

- 9.4.1 The plans and specifications submitted for the Subdivision Works Certificate for stage 1 must show that the demolition of all buildings and structures will be carried out in accordance with Australian Standard 2601 – 2001.
- 9.4.2 Asbestos removal to be undertaken with the approval of Workcover and in compliance with NSW Department of Environment and Conservation and Occupational Health and Safety Standards. The removal contractors are to be accredited by Workcover. Identification of disposal to metropolitan waste tip to be submitted to Council. Upon completion of asbestos removal and decontamination of the site, a clearance certificate from a NATA registered environmentalist shall be submitted to Council.

Copies of receipts from the disposal of asbestos from the site shall be submitted to Council and shall be to the satisfaction of Council.

9.5 **Special Infrastructure Contribution**

- 9.5.1 A special infrastructure contribution is to be made in accordance with the *Environmental Planning and Assessment (Special Infrastructure Contribution — Western Sydney Growth Areas Determination 2011* (as in force when this consent becomes operative).

More information

Information about the special infrastructure contribution can be found on the Department of Planning's website:

<http://www.planning.nsw.gov.au/PlanningSystem/DevelopmentContributionsSystem/abid/75/guage/en-US/Default.aspx>

[Please contact the Department of Planning regarding arrangements for the making of a payment.](#)

9.6 **Salinity**

- 9.6.1 A report from a geotechnical engineer is to be submitted to Council certifying the site classification for the reactivity of the lots in the subdivision after identification of

the soil characteristics in accordance with the provisions of AS 2870, "Residential Slabs and Footings." prior to the issue of the Subdivision Works Certificate for the stage 2 works.

- 9.6.2 A detailed salinity assessment report prepared by a suitable qualified person shall be prepared and submitted to Council's satisfaction prior to the issue of a Subdivision Works Certificate for the stage 2 works. The recommendations of the salinity assessment are to be identified on the relevant Subdivision Works Certificate plans and implemented during construction.

- 9.6.3 The recommendations of the Geotechnical Investigation prepared by Douglas Partners dated August 2018 (Report No. 94508.00) are to be followed and implemented.

9.7 Aesthetics — Construction Certificates for stages 3 and 4

- 9.7.1 The reflectivity index of glass used in the external facade of any building is not to exceed 20 percent, must not affect road traffic and must not cause discomfort through glare or intense heat to surrounding areas. "Anti-glare" glazing is to be used to minimise any glare affect. Details are to be provided as part of the Construction Certificate plans.

- 9.7.2 Any bathroom, w.c. or laundry window in the external wall of the building shall be fitted with translucent glazing.

9.8 Fencing — Construction Certificates for stages 3 and 4

- 9.8.1 All fencing is to be erected on top of any retaining walls at full cost to the developer.

- 9.8.2 Fencing adjoining public roads is to be finished with an anti-graffiti coating.

- 9.8.3 All front side and rear fencing is to be in accordance with the submitted details approved by Council on the approved dwelling plans in Condition 2.1.1 of this consent. Any variation to these will need the prior formal approval of Council.

- 9.8.4 The Applicant must provide further details of fencing proposed for dwellings with private open space in at the front yard. This fencing should be 1.8m high slat colourbond like fencing.

- 9.8.5 All internal and external boundary retaining walls are to be constructed of masonry.

9.9 Access/Parking — Construction Certificates for stages 3 and 4

- 9.9.1 The internal driveway and parking areas are to be designed in accordance with Australian Standard 2890.1.

- 9.9.2 All internal roads and other paved areas shall be designed to provide continuous surface drainage flow paths to approved points of discharge.

- 9.9.3 A driveway location plan shall be submitted to Council demonstrating that all proposed lots are able to achieve satisfactory street access, meeting the relevant clearance requirements from tangent points, vehicle sweep paths, services, infrastructure stormwater grates/lintels and street trees.

At least 1 metre clearance (2 m desirable) is required from stormwater lintels & pits unless approved by the Principal Certifying Authority.

9.10 Aboriginal Archaeology

- 9.10.1 The recommendations of the submitted Due Diligence Archaeological Report prepared by ecological Australia (dated 9 July 2018) are to be implemented. In this regards, further archaeological assessment in accordance with the Office of Environment and Heritage's guidelines is required. This may include the requirement for an Aboriginal Heritage Impact Permit under the National Parks and Wildlife Act 1974. A copy of the additional archaeological assessment is to be submitted to Council prior to the issue of any Subdivision Works Certificate for stage 2 on the site.

9.11 BASIX Certificate Compliance

- 9.11.1 An amended BASIX Certificate will need to be provided to Council prior to the issue of the construction certificate. The amended BASIX should reflect the approved plans in condition 2.1.1.

10 PRIOR TO CONSTRUCTION CERTIFICATE (BUILDING)

10.1 Building Code of Australia Compliance

- 10.1.1 All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the ongoing benefit of the community. Compliance with the performance requirements can only be achieved by:

- (a) Complying with the deemed to satisfy provisions, or
- (b) Formulating an alternative solution which:
 - (i) complies with the performance requirements, or
 - (ii) is shown to be at least equivalent to the deemed to satisfy provision, or
 - (iii) A combination of (a) and (b).

10.2 Site Works and Drainage

- 10.2.1 Any required retaining wall(s) and/or other effective method to retain excavated or filled ground (not being Exempt Development), together with any associated groundwater drainage system, shall be designed by an appropriately qualified person. Details of such site works shall accompany the relevant Subdivision Works Certificate or Construction Certificate.

- 10.2.2 Stormwater drainage from the site shall be designed to satisfactorily drain rainfall intensities of 159mm per hour over an average recurrence interval of 20 years. The design shall:

- (a) be in accordance with Australian Standard 3500.3, and
- (b) provide for drainage discharge to an existing Council drainage system, and
- (c) ensure that the development, either during construction or upon completion, does not impede or divert natural surface water runoff so as to cause a nuisance to adjoining properties.

- 10.2.3 Soil erosion and sediment control measures shall be designed in accordance with Council's Soil Erosion and Sediment Control Policy. Details shall accompany any Construction Certificate.

11 PRIOR TO SUBDIVISION WORKS CERTIFICATE FOR STAGE 2 (BIODIVERSITY)

11.1 Biodiversity Management Plan

- 11.1.1 A Biodiversity Management Plan ("BMP"), comprising of a detailed site plan and an accompanying report in a legible format prepared by a person who has qualifications and experience in respect of ecology is to be submitted by the proponent for Council's consideration. The BMP is to relate to the land within Lot Lot 132 DP 208203 and must contain full details of the actions proposed to be taken with respect to the management of fauna during the course of carrying out the development. The BMP is to be consistent with the NSW Department of Planning, Industry and Environment "*Code of Practice for injured, sick and orphaned protected fauna*" 2011 (the Code).
- 11.1.2 The BMP must include the following:
- a. Biodiversity management strategies for pre-construction, construction and post construction activities including environmental control measures for the pre-clearing process.
 - b. A fauna rescue and release procedure. Where tree removal is required then a licensed wildlife carer or ecologist will be required on site as a fauna handler ('Rescuer' under the Code) during tree removal works.
 - c. A procedure for controlling the introduction and spreading of weeds and pathogens, including hygiene protocols and the arrangements for monitoring;
 - d. Proposed strategies for re-use of top soil, tree hollows, logs, coarse woody debris and bush rock.
 - i. All identified tree hollows proposed to be removed, are to be salvaged from trees removed and placed in retained or nearby bushland areas under the direction of an ecologist to Council's satisfaction.
 - ii. For all tree hollows, not able to be salvaged, they are to be replaced with nest boxes or artificial hollows with three nest boxes / artificial hollows for every one hollow removed.
 - e. A procedure for dealing with unexpected threatened species finds. The procedure must include, as a minimum, the following:
 - i. stop work arrangements in the immediate area of the threatened species;
 - ii. notification and communication protocol;
 - iii. consultation with the specialists to assess the significance of the find; and
 - iv. a list of approvals, licences or permits likely required prior to recommencing works.

- If trees or areas of vegetation are to be retained as part of the development, the procedures and methods for identifying and protecting the areas of vegetation to be retained showing them as exclusion zones in accordance with Australian Standard (AS) 4970 - 2009 Protection of trees on development sites.

11.1.3 The commencement of any works under this consent and the issuing of any construction certificate must not occur unless and until the Council has given notice in writing to the proponent that it has approved the BMP.

11.1.4 The development must be carried out at all times in accordance with the approved BMP.

11.2 Vegetation Management Plan

11.2.1 The Approved Vegetation Management Plan prepared by Ecological, Report Name: 54 Terry Road, Rouse Hill Vegetation Management Plan and date 10 February 2020, Version 4 must be complied with.

11.2.2 Annual reports must be provided to Council through the Natural Areas Team.

11.3 Asset Protection Zone

11.3.1 The Asset Protection Zone is to be managed to Inner Protection Area standards as per the approved Bushfire Protection Assessment prepared by Ecological, Report Name: 54 Terry Road, Rouse Hill Bushfire Protection Assessment and date 10 February 2020, Version 9 and Rural Fire Service standards. No clearing for Bushfire protection purposes is allowed within the Existing Native Vegetation (ENV) area.

12 PRIOR TO DEVELOPMENT WORKS

12.1 Safety/Health/Amenity

12.1.1 Toilet facilities shall be provided on the land at the rate of 1 toilet for every 20 persons or part thereof employed at the site.

Each toilet provided shall be:

- (a) a standard flushing toilet, or
- (b) a temporary on-site toilet which is regularly maintained and the waste disposed to an approved sewerage management facility.

12.1.2 A sign is to be erected and maintained in a prominent position on the site in accordance with Clause 98 A (2) of the Environmental Planning and Assessment Regulations 2000 indicating:

- (a) the name, address and telephone number of the principal certifying authority for the work, and
- (b) the name of the principal contractor (if any) for the 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.

This condition 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.

12.1.3 Should the development work:

- (a) be likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
- (b) involve the enclosure of a public place,

a hoarding or protective barrier shall be erected between the work site and the public place. Such hoarding or barrier shall be designed and erected in accordance with Council's current Local Approvals Policy under the Local Government Act 1993.

Where necessary, an awning shall be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

The hoarding, awning or protective barrier shall be effectively illuminated between sunset and sunrise where it may be hazardous to any person in the public place.

12.1.4 Soil erosion and sediment control measures shall be provided in accordance with Council's Soil Erosion and Sediment Control Policy.

12.1.5 A single vehicle/plant access to the land shall be provided to minimise ground disturbance and transport of soil onto any public place. Such access shall be provided in accordance with the requirements of Appendix "F" of Council's Soil Erosion and Sediment Control Policy. Single sized 40mm or larger aggregate placed 150mm deep, and extending from the street kerb/road shoulder to the land shall be provided as a minimum.

12.1.6 Any excavation and/or backfilling associated with the development shall be executed safely and in accordance with appropriate professional standards, with any excavation properly guarded and protected to prevent such work being dangerous to life or property.

12.2 Notification to Council

12.2.1 The person having the benefit of this consent shall, at least 2 days prior to work commencing on site, submit to Council a notice under Clauses 135 and 136 of the Environmental Planning and Assessment Regulation 2000, indicating details of the appointed Principal Certifying Authority and the date construction work is proposed to commence.

12.3 Home Building Act

12.3.1 The construction of *residential building work* within the meaning of the *Home Building Act 1989* must not 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 following information:

(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 NSW Home Building Compensation Fund "Statement of Cover" under Part 6 of that Act,

(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 Part 3 of the Act, the number of the owner-builder permit.

12.4 Sydney Water Authorisation

12.4.1 Sydney Water Corporation's approval, in the form of appropriately stamped Construction Certificate plans, shall be obtained and furnished to the Principal Certifying Authority to verify that the development meets the Corporation's requirements concerning the relationship of the development to any water mains, sewers or stormwater channels.

OR

The approved plans are to be submitted to a Sydney Water Tap In, to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements and if further requirements need to be met. The plans must be appropriately stamped and all amended plans will require restamping. For further information please refer to the "Developing Your Land" section of the website: www.sydneywater.com.au, or telephone 1300 082 746 for assistance.

13.0 DURING CONSTRUCTION (ENGINEERING)

13.1 Notification of Works

13.1.1 A written notification of works must be submitted to Council's Engineering Approvals Team prior to the commencement of any engineering works required by this consent. This must be submitted a minimum five (5) business days prior to commencement of engineering works.

13.1.2 A notification of works flyer (letter drop) is to be provided to all residential housing, businesses and organisations adjacent to any engineering works approved by this consent. This is for works undertaken on Council controlled lands such as roads, drainage reserves and parks. The notification of works flyer must contain details of the proposed works, locality map of works, contact details and the anticipated time period. A signed copy of the notice is to be provided to Council's Engineering Approvals Team and is to show the date of the letter drop as well as highlight the area that received the notification.

13.2 Insurances

- 13.2.1 Current copies of relevant insurance Certificates of Currency are to be submitted to Council's Engineering Approvals Team. This shall be submitted prior to commencement of engineering works required by this consent that are carried out on Council controlled lands such as roads, drainage reserves and parks. This includes Public Liability Insurance with a minimum of \$20,000,000.00 Indemnity and Workers Compensation.

13.3 Service Authority Approvals

- 13.3.1 Prior to the commencement for construction of footway crossings and driveways a clearance shall be obtained from the relevant telecommunications carriers and Endeavour Energy. The clearance shall notify that all necessary ducts have been provided under the proposed crossing.

13.4 Boundary Levels

- 13.4.1 Any construction at the property boundary, including but not limited to fences, retaining walls and driveways shall not be carried out until boundary alignment levels have been fixed.

13.5 Tree Protection and Preservation

- 13.5.1 Existing vegetation and trees shall be left undisturbed except where roads, stormwater drainage infrastructure, site filling and/or building works are proposed.
- 13.5.2 Prior to commencement of engineering works that may disturb existing vegetation/trees, the site shall be inspected to identify and appropriately mark out any trees to be retained as well as determine areas that are to be left undisturbed. Proposed roads must be set-out onsite prior to this inspection.

Note: Inspection must be carried out by approved by a Consulting Arborist meeting AQF Level 5. The applicant's representative must be present during this inspection.

- 13.5.2A All tree protection works shall be carried out before excavation, grading and site works commence. Tree protection works shall be inspected and approved by a Consulting Arborist meeting AQF Level 5 prior to construction works commencing.
- 13.5.2B All trees to be protected (including Tree No 48) shall be clearly identified and all TPZs surveyed.
- 13.5.2C Fencing is to be erected around existing trees to be retained. Protective Fencing is to be installed to the full extent of the TPZs within the site. This fencing is to be erected prior to any materials being brought on site or before any site, civil works or construction works commence. The fence shall enclose a sufficient area so as to prevent damage to the TPZ as defined defined in 5.1 of Birds Tree Consultancy Report Revision A dated 10 February 2020. Fence to comprise 1800mm high chain wire mesh fixed to 50mm diameter Galvanised steel posts. Panels should be securely fixed top and bottom to avoid separation. No storage of building materials, tools, paint, fuel or contaminants and the like shall occur within the fenced area.
- 13.5.2D Prior to works commencing, tree protection signage is to be attached to each tree protection zone, displayed in a prominent position and the sign repeated at 10

metres intervals or closer where the fence changes direction. Each sign shall contain in a clearly legible form, the following information:

Tree protection zone.

- This fence has been installed to prevent damage to the trees and their growing environment both above and below ground and access is restricted.
- No Access within Tree Protection Zone
- The name, address, and telephone number of the developer.
- The name and telephone number of the Site Arborist.

13.5.3 There is to be no storage of materials, stockpiling of excavated material or parking of plant/machinery within the drip line of the crown of any retained trees.

13.5.3A Without limiting condition 13.5.3, storage of materials, mixing of materials, vehicle parking, disposal of liquids, machinery repairs and refueling, site office and sheds, and the lighting of fires, stockpiling of soil, rubble or any debris shall not be carried out within the TPZ of existing trees. No backfilling shall occur within the TPZ of existing trees.

13.5.4 Council must be notified a minimum of 24 hours prior to the removal of any branches from existing trees which are to be retained. Subject to Council's direction, this work must be generally undertaken by a qualified Arborist.

13.5.5 For avoidance of doubt, this condition is not intended to prevent the carrying out of the work within the tree protection zone of Tree 48 depicted in drawings 019026 - C06 H and 2019026 - C11 H.

13.6 **Soil Erosion and Sediment Control Measures**

13.6.1 Soil erosion and sediment control measures onsite shall be implemented, maintained and monitored in accordance with Council's Engineering Guide for Development.

13.6.2 Re-vegetation and restoration of all disturbed areas as a result of the development works shall be completed as soon as practicable after the completion of earthworks and before the commencement of any other works on-site. The revegetated/restored areas must be established prior to the release of maintenance security/bonds.

Note: All open drains must be turfed.

13.6.3 All required soil erosion and sedimentation control measures are to be maintained throughout the entire construction period and until all disturbed areas are restored to the satisfaction of Council in accordance with the design and construction specification. Infringement Notices incurring a monetary penalty may be issued by Council where the maintenance of measures is deemed inadequate.

13.7 **Filling of Land and Compaction Requirements**

13.7.1 Suitable land fill replacement is required when unsuitable soils are removed. All fill including existing fill shall be compacted in accordance with Council's Works Specification - Civil (current version). A compaction certificate shall be obtained from an appropriately qualified practising registered engineer (NER) verifying that

the correct compaction requirements have been met. This compaction certificate is to be submitted to Council.

13.7.2 Special attention is drawn to the below listed requirements of Council's Works Specification - Civil (Current Version).

- a) Submission of compaction certificates for fill within road reserves.
- b) Submission of compaction certificates for road sub-grade.
- c) Submission of compaction certificates for road pavement materials (sub-base and base courses).
- d) The submission of 2 contour lot fill diagrams and lot fill compaction certificates. A restriction as to User with Council's standard wording must be placed on filled lots.
- e) Compliance Certificates from road material suppliers (the relevant certified stockpile number shall be digitally shown from supplier).

The above documentation shall be submitted prior to Subdivision and/or Occupation certificate as required by this consent.

Note: Council's Works Specification (Civil) requires road pavement and pipe bedding materials be sourced from N.A.T.A. certified stockpiles.

13.7.3 Site filling within lot boundaries (not in road reserves) and compaction is to be carried out under the supervision of a Chartered Geotechnical Engineer and shall be in accordance with Blacktown City Council's "Works Specification - Civil (Current Version)". Minimum standard compaction of 95% must be achieved and certified by a NATA registered soils lab and details submitted to Council.

13.7.4 Only clean fill shall be deposited/imported on site in accordance with Council's Works Specification - Civil (Current Version).

Dry builder's waste i.e. bricks plaster and timber industrial waste or putrescible materials must not to be deposited on site. Validation of the imported fill material will be required by a suitably qualified registered engineer.

13.7.5 Appropriate dust control measures are to be implemented during construction to reduce any impact on local air quality and reduce dust emissions. This will include but not be limited to regularly wetting down of the site during the course of works being carried out in order to control wind blown dust.

13.7.6 All roads adjoining the site must be kept clean and free of all materials. Infringement Notices incurring a monetary penalty may be issued by Council where this measure is not being complied with.

13.7.7 Trucks transporting cut and fill must have their loads covered and provisions of "shaker pads" and wash-down areas for trucks leaving the site are to be made available. All details are to be shown on soil erosion and sediment control plans.

13.7.8 Prior to the placement of any fill on the site all topsoil and vegetation must be removed down to a suitable sub-grade material. The topsoil is to be stockpiled for use in revegetation of the site.

13.8 **Filling in Contaminated Land**

- 13.8.1 During the course of placement of filling the applicant shall undertake further testing for potential soil contamination. Validation of the imported fill material will be required.
- 13.8.2 All testing and validation of the fill material shall be undertaken by a suitably qualified environmental consultant in accordance with Council's Policy and Procedures for the determination of Rezoning Development and Building Applications involving Contaminated Land. A Remediation and Validation Report documenting the testing undertaken must be submitted to and approved by Council.
- 13.8.3 Should any remediation works be required documentary evidence prepared by a suitably qualified environmental consultant validating the site must be submitted to and approved by Council.
- 13.9 **Inspection of Engineering Works - Environmental Planning and Assessment Act 1979**
- 13.9.1 Comprehensive inspection compliance certificate(s) are to be issued for all engineering works required by this consent and the approved subdivision works certificate. The inspection compliance certificate(s) can only be issued by Council or an accredited certifier, under *Part 6 of the Environmental Planning and Assessment Act 1979* as amended. A schedule of mandatory inspections is listed in Council's Works Specification – Civil (current version).

Where Council is appointed as the Principal Certifier for the development, only compliance certificates issued by accredited certifiers will be accepted. All compliance certificate(s) must certify that the relevant work has been completed in accordance with the pertinent Notice of Determination / Development Consent and Construction Certificate.

13.10 **Inspection of Engineering Works - Roads Act 1993**

- 13.10.1 All inspection(s) required by this consent for any engineering works that are approved under the *Roads Act 1993* must be made by Council's Development Overseers and/or Roads and Maritime Services officers as required.

Inspections must be pre-booked with a minimum twenty-four (24) hours notice. Council's Development Overseers may be contacted on 02 9839 6586 between 6:45am – 7:30am Monday to Friday.

Note: A site inspection is required prior to commencement of work. A schedule of mandatory inspections is listed in Council's Works Specification – Civil (current version).

13.11 **Public Safety**

- 13.11.1 The applicant is advised that all works undertaken are to be maintained in a safe condition at all times. Council may at any time and without prior notification make safe any such works Council considers to be unsafe and recover all reasonable costs incurred from the applicant.

13.12 **Site Security**

- 13.12.1 Chain wire gates and security fencing must be provided around the site in order to prevent unauthorised access and dumping of rubbish.

13.13 Traffic Control

- 13.13.1 Any "Traffic Control Plan" utilised for engineering works required by this consent must be prepared by person who holds a current Roads and Maritime Services (RMS) Work Zone Traffic Management Plan accreditation and photo card for all works that are carried out in or adjacent to a public road. This Plan must satisfy all the requirements of AS 1742.3 - 2009.
- 13.13.2 Traffic control devices/facilities (such as barricades, signs, lights) required by the certified Traffic Control Plan must be setup, installed, monitored and maintained by a person who holds a current Roads and Maritime Services (RMS) accreditation and photo card to implement Traffic Control Plans.
- 13.13.3 Persons undertaking the control of traffic through or around work sites on Council controlled roads must hold a current Roads and Maritime Services (RMS) Traffic Controller accreditation and photo card and carry it with them.
- 13.13.4 Prior to implementation of any traffic control system and during the entire course of construction suitably qualified Roads and Maritime Services (RMS) accredited work site traffic controllers must ensure a smooth transition with other nearby traffic control setups. The coordination, communication and cohesion between adjacent traffic control systems shall be addressed by the applicant and must satisfy all the requirements of AS 1742.3 - 2009.
- 13.13.5 Where the Traffic Control Plan may change during the course of construction to facilitate new works, a revised traffic control plan shall be prepared and certified by a person who holds a current Roads and Maritime Services (RMS) accreditation to prepare a Work Zone Traffic Management Plan. This Plan must satisfy all the requirements of AS 1742.3 – 2009 and the current version of the RMS *Traffic Control at Work Sites* manual and shall be submitted to Council prior to implementation.

13.14 Powder Coated Furniture

- 13.14.1 Where the conditions of this consent permit the installation of powder coated furniture (i.e. street lighting poles, bus shelters, rubbish bins, seats or any other items of street furniture), a certificate from the manufacturers shall be provided to Council confirming that the nominated powder coated items have been prepared and coated in accordance with Australian Standard AS/NZ 4506-2005 (service condition category 3). This certificate must be no more than 3 months old and shall be provided to Council prior to the installation of the relevant items of the street furniture. Any items of street furniture not so certified shall be removed and replaced at no cost to Council with items appropriately certified.

13.15 Other Matters

- 13.15.1 Provide certification prior to placement, that the bio-retention filter media ex-bin has:
- i. A minimum hydraulic conductivity as defined by ASTM F1815-11 of 250 mm/hr (actual, not predicted);
 - ii. A maximum hydraulic conductivity as defined by ASTM F1815-11 of 700 mm/hr (actual, not predicted);

- iii. A pH between 5.5 to 7;
- iv. An Orthophosphate content < 40 mg/kg;
- v. A Total Nitrogen content < 900 mg/kg; and
- vi. Is not hydrophobic.

- 13.15.2 Provide certification prior to placement in the bio-retention basin, that the transition layer material ex-bin:
- i. Is a clean, washed well-graded coarse sand or coarse sand blend containing little or no fines (< 2%), and
 - ii. Satisfies the bridging criteria $D_{15}(\text{transition layer}) \leq 4 \times D_{85}(\text{filter media})$ where: D_{15} is the 15th percentile particle size in the transition layer material (i.e., 15% of the sand is smaller than D_{15} mm), and D_{85} is the 85th percentile particle size in the filter media.
 - iii. Satisfies the hydraulic conductivity criteria $D_{15}(\text{transition layer}) \geq D_{15}(\text{filter media}) \times 2$.
- 13.15.3 Provide certification prior to placement in the bio-retention basin, that the drainage layer material ex-bin:
- i. Is a clean washed 5-7 mm gravel, such as washed screenings.
 - ii. Satisfies the bridging criteria $D_{15}(\text{drainage layer}) \leq 4 \times D_{85}(\text{transition layer})$ where: $D_{15}(\text{drainage layer})$ is the 15th percentile particle size in the drainage layer material (i.e., 15% of the gravel is smaller than D_{15} mm), and $D_{85}(\text{transition layer})$ is the 85th percentile particle size in the transition layer material.
 - iii. Satisfies the hydraulic conductivity criteria $D_{15}(\text{drainage layer}) \geq D_{15}(\text{transition layer}) \times 2$.
- 13.15.4 No fertiliser or additional nutrient material or mulch is to be provided to the bio-retention basin filter area during planting of the tubestock, or at any time.

14 DURING CONSTRUCTION (BUILDING)

14.1 Safety/Health/Amenity

- 14.1.1 The required toilet facilities shall be maintained on the land at the rate of 1 toilet for every 20 persons or part of 20 persons employed at the site.
- 14.1.2 A sign is to be erected and maintained in a prominent position on the site in accordance with Clause 98 A (2) of the Environmental Planning and Assessment Regulations 2000 indicating:
- (a) the name, address and telephone number of the principal certifying authority for the work, and
 - (b) the name of the principal contractor (if any) for the 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.
- 14.1.3 Should the development work:
- (a) be likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
 - (b) involves the enclosure of a public place,

the required hoarding, awning or protective barrier shall be maintained between the land and the public place.

The hoarding, awning or protective barrier shall be effectively illuminated between sunset and sunrise where it may be hazardous to persons in the public place.

- 14.1.4 Soil erosion and sediment control measures (including the connection of roofwater downpipes to stormwater drainage lines upon fixing of roof covering) shall be maintained during the development works.
- 14.1.5 A single vehicle/plant access to the land shall be maintained to minimise ground disturbance and transport of soil onto any public place. Such access shall be maintained in accordance with the requirements of Appendix "F" of Council's Soil Erosion and Sediment Control Policy. As a minimum, single sized 40mm or larger aggregate placed 150mm deep, and extending from the street kerb/road shoulder to the land shall be provided.
- 14.1.6 Any excavation and/or backfilling associated with the ongoing development works shall be executed safely and in accordance with appropriate professional standards, with any excavation properly guarded and protected to prevent them from being dangerous to life or property.
- 14.1.7 Building and construction materials, plant, equipment and the like shall not be placed or stored at any time on Council's footpath, roadway or any public place.

14.2 **Building Code of Australia Compliance**

- 14.2.1 All building work shall be carried out in accordance with the provisions of the Building Code of Australia.

14.3 **Surveys**

- 14.3.1 The building(s) shall be set out by a registered surveyor and a survey report lodged with the Principal Certifier to verify the approved position of each structure in relation to the property boundaries.

14.4 **Nuisance Control**

- 14.4.1 The hours of any offensive noise-generating development works shall be limited to between 7.00am to 6.00pm, Mondays to Fridays: 8.00am to 1pm, Saturdays; and no such work to be undertaken at any time on Sundays or public holidays.

14.5 **Stormwater Drainage**

- 14.5.1 Stormwater, surface water and sub-surface seepage (other than natural flows) shall be prevented from entering the building or being diverted onto any adjoining land (as applicable) by:
 - (a) the floor level being a minimum 225mm above the adjoining finished ground level, and/or
 - (b) being drained to an effective drainage system.

14.6 Waste Control

- 14.6.1 The waste material sorting, storage and re-use requirements of the approved Waste Management Plan and Council's Site Waste Management and Minimisation Development Control Plan shall be implemented during the course of development works.

14.7 Construction Inspections

- 14.7.1 The person having the benefit of this consent is required to notify the Principal Contractor for the building construction project that the following mandatory and critical stage inspections must be conducted by an accredited certifier:

- (a) After excavation for, and prior to placement of, any footings; and
- (b) Prior to pouring any in-situ reinforced concrete building element; and
- (c) Prior to the covering of the framework for any floor, wall roof or other building element, and prior to covering waterproofing in any wet areas; and
- (d) Prior to covering waterproofing in any wet areas (but for a minimum of 10% of rooms with wet areas in any class 2,3 or 4 building); and
- (e) Prior to covering any stormwater drainage connections; and
- (f) After the building work has been completed and prior to any Occupation Certificate being issued in relation to the building.

The critical stage inspection "(f)" must be carried out by the Principal Certifier.

Any inspection conducted by an accredited certifier other than the nominated Principal Certifier for the project must be verified by way of a Compliance Certificate issued for the relevant works.

Note: Failure to ensure the relevant inspections are conducted will preclude the issue of an Occupation Certificate.

14.8 Salinity and Aggressive Soil Management

- 14.8.1 The environmental consultant engaged for this project is to be on site for regular monitoring of the approved site works. In this regard, Council will require a post earthworks Salinity Investigation report demonstrating that the salinity management measures provided in the Salinity Management Plan have been implemented and that the site is suitable for residential development. Any lots identified as containing saline or aggressive soils shall provide suitable Section 88B restrictions/ covenants on title for building construction measures to mitigate the effects of aggressive soils and salinity.

14.9 Site Contamination

- 14.9.1 Should any contaminated material be unearthed during the construction works, all works are to cease immediately and a suitably qualified environmental site contamination consultant is to investigate and report on the findings. Any recommended remediation and validation works are to be undertaken pursuant to

Council's Contamination Lands Policy.

14.10 Aboriginal Heritage

- 14.10.1 If, during the course of construction, the applicant or persons acting on this consent become aware of any previously unidentified Aboriginal object(s), all work likely to affect the object(s) shall cease immediately and the NSW Office of Environment & Heritage informed in accordance with Section 89A of the *National Parks and Wildlife Act 1974*. Relevant works shall not recommence until written authorisation from the NSW Office of Environment & Heritage is received by the Applicant. In addition, a member of each of the Western Sydney Aboriginal Stakeholder Groups is to be contacted.

14.11 Other matters

- 14.11.1 Throughout the duration of the works, the applicant is to demonstrate compliance with the following approval parameters:
- (a) The applicant is to ensure that the site has been satisfactorily secured so as to prevent any unauthorised dumping of illegal fill/waste building materials (i.e. non-V.E.N.M soils) from entering onto the development site.
 - (b) Appropriate dust suppression measures are to be incorporated into the site works process, so as to ensure that adjoining properties in the local vicinity are not negatively impacted upon by dust generated from the development site.
 - (c) Any fill material imported to the site shall be certified at the source by a suitably qualified consultant as VENM fill material, non-slightly saline and non-aggressive to concrete or steel. If the importation of fill is undertaken under a specific EPA exemption, relevant details of the EPA exemption shall be forwarded to Council prior to the importation of fill to the site.

Should Council receive any complaints regarding non-compliance with any of the above matters or other such **operational** type matters, then Council will have no alternative but to fully investigate the complaint and pursue an appropriate course of action.

15 PRIOR TO OCCUPATION CERTIFICATE

15.1 Road Damage

- 15.1.1 The cost of repairing any damage caused to Council's assets in the vicinity of the land as a result of the development works shall be met in full by the applicant/developer.

Note: Should the cost of damage repair work not exceed the road maintenance bond Council will automatically call up the bond to recover its costs. Should the repair costs exceed the bond amount a separate invoice will be issued.

15.2 Services/Utilities Authorities

- 15.2.1 The following documentary evidence shall accompany any Occupation Certificate:

- (a) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Applications must be made through an authorised Water Servicing Coordinator. Please refer to the "Building Plumbing and Developing" Section of the website www.sydneywater.com.au, then follow the "Developing Your Land" link or telephone 13 20 92 for assistance. Following application a "Notice of Requirements" will advise of water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design. The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the occupation of the development/release of the plan of subdivision, whichever occurs first.
 - (b) A "Notification of Arrangement" Certificate from a recognised energy provider, stating that arrangements have been made with the service authority for electrical services, including the provision of street lighting, to the development.
 - (c) A written clearance from Telstra or any other recognised communication carrier, stating that services have been made available to the development or that arrangements have been made for the provision of services to the development.
- 15.2.2 The applicant shall obtain a Trade Waste Approval from the Sydney Water Corporation Limited in relation to any discharges to the Corporation's sewerage system.
- 15.2.3 A final written clearance shall be obtained from Sydney Water Corporation, Integral Energy and Telstra (or any other recognised communication carrier) if such clearance (in the form of a Section 73 Certificate or Notification of Arrangement) has not previously been issued.
- 15.3 Landscaping/Car Parking**
- 15.3.1 All landscaping shall be completed in accordance with approved landscaping design plan. All turfed areas shall be finished level with adjoining surfaces and graded to approved points of drainage discharge.
- 15.3.2 All fencing and retaining walls shall be completed in accordance with the approved details submitted as part of the Construction Certificate. All fencing/retaining work must be provided at full cost to the developer. All fencing is to be constructed on top of any retaining walls. The selected fencing material/design must also minimise/eliminate the potential for graffiti attacks. Where possible, foliage should be grown on/over fencing adjacent to public areas to minimise any potential for graffiti.
- 15.3.3 The required letterboxes are to comply with the details submitted as part of the Construction Certificate and with Australia Posts requirements for size. The letterbox system should be vandal resistant and secure.
- 15.3.4 All required internal driveways and car parking spaces shall be sealed with a hard standing, all-weather material to a standard suitable for the intended purpose.
- 15.3.5 Any future substation or other utility installation required to service the approved

development shall not under any circumstances be sited on future or existing Council land, including road reservations and/or public or drainage reserves.

15.4 Compliance with Conditions

- 15.4.1 An Occupation Certificate shall not be issued until such time as all conditions of this consent, other than “Operational” and “Subdivision certificate” conditions, have been satisfied. The use or occupation of the development prior to compliance with all conditions of consent, other than “Operational” conditions, may render the applicant/developer liable to legal proceedings.

15.5 Temporary Facilities Removal

- 15.5.1 Any hoarding or similar barrier erected to protect a public place shall be removed from the land and/or public place.
- 15.5.2 Any temporary toilet facilities provided during construction works shall be appropriately dismantled, disconnected and removed from the land.
- 15.5.3 Any temporary soil erosion control measure installed during development works shall be removed and other permanent measures required by Council’s Soil Erosion Control Policy shall be provided.
- 15.5.4 Any temporary builder's sign or other site information sign shall be removed from the land.
- 15.5.5 Any temporary site access provided for the purpose of development works shall be removed and the kerb and gutter and/or previous roadworks reinstated in a manner satisfactory to Council. Should the reinstatement involve the provision of a new vehicular crossing, layback, kerb and gutter or road shoulder works the separate approval of Council's Maintenance Section shall be obtained (and any appropriate fees paid) prior to such works commencing.

15.6 Fee Payment

- 15.6.1 Any fee payable to Council as part of a Construction, Compliance or Occupation Certificate or inspection associated with the development (including the registration of privately issued certificates) shall be paid in full.

15.7 Hazardous Materials and Waste

- 15.7.1 A clearance certificate/statement prepared in accordance with the National Code of Practice for the Safe Removal of Asbestos shall be issued by the competent demolition contractor who holds an appropriate Demolition Licence issued by the NSW WorkCover Authority under the provisions of the Work Health and Safety Act 2011 (and any relevant Regulation there under). The certificate/statement must state that the pre-existing building/s was/were demolished in accordance with the conditions and terms of that licence, Australian Standard 2601-2001 – The Demolition of Structures and that any asbestos removal has been carried out in accordance with NOHSC-2002 – Code of Practice for Safe Removal of Asbestos. A copy of the clearance certificate/statement shall be lodged with Council.
- 15.7.2 Submit the receipt from the trade waste depot for disposal of the asbestos from the

removal/demolition of the existing dwelling.

15.8 Street Tree Planting

- 15.8.1 Any tree planting (and maintenance) along the frontage of the development site to improve the amenity of the streetscape must be approved before a Subdivision Certificate is issued.

The number of trees should equal the number lots/dwellings with street frontage. However, corner lots require 1 tree for the primary frontage and 2 trees on the side frontage. In the case of medium and high density residential developments, trees will be planted at a minimum spacing of 8 metres.

Additional trees may be requested following assessment of the subdivision configuration.

Trees must be of a minimum container size of 45 litres with root barriers.

The applicant must obtain clearances from relevant service authorities.

The applicant will be required to pay a bond per tree to ensure the health and vigour of the tree(s) calculated in accordance with Blacktown City Council's Goods and Services Pricing Schedule. The bond will be returned 12 months after the completion of the development (i.e. on issue of final occupation/subdivision certificate), to council if the trees are maturing satisfactorily. The applicant is responsible for notifying Council when the works are completed.

The applicant will also be required to pay an inspection fee calculated in accordance with Blacktown City Council's Goods and Services Pricing Schedule. A Blacktown City representative will inspect all street tree and public landscaping during the establishment period (i.e. between the practical date of completion and formal handover). Elements deemed to be not adequately performing are to be removed, substituted or repaired by the developer within 60 days of written notification.

16 Engineering Matters

16.1 Surveys/Certificates/Works As Executed plans

- 16.1.1 A Work-as-Executed (WAE) plan signed by a Registered Engineer (NER) or a Registered Surveyor must be submitted to Council when the engineering works are completed. A hardcopy (A1 size) and softcopy (on a CD/USB with file format .PDF) of the WAE plans are to be submitted to Council. All engineering Work-as-Executed plans MUST be prepared on a copy of the original, stamped Construction Certificate plans for engineering works.
- 16.1.2 A certificate from a Registered Surveyor must be obtained and submitted to Council verifying that all finished floor levels (FFL) required by this consent have been achieved. The certificate must acknowledge that works and the construction of the floors have been complete. All levels must be to Australian Height Datum (AHD).
- 16.1.3 A certificate from a Registered Surveyor must be obtained and submitted to Council verifying that all finished surface levels (FSL) for lot(s) required by this

consent have been achieved and/or have been maintained in accordance with those established at the time of creation of the lot. The certificate must acknowledge that works have been complete. All levels must be to Australian Height Datum (AHD).

- 16.1.4 A Certificate from a Registered Engineer (NER) must be lodged with Council verifying that pier and beam style construction was used adjacent to the easement to the depth of the invert of the pipeline.
- 16.1.5 A Certificate shall be submitted by a Registered Surveyor indicating that all pipelines and associated structures lie wholly within any easements required by this consent.
- 16.1.6 A certificate from a Registered Engineer (NER) must be obtained and submitted to Council verifying that the constructed Stormwater Quality Control system will function effectively in accordance with Blacktown Council's DCP Part J – Water Sensitive Urban Design and Integrated Water Cycle Management.
- 16.1.7 The Applicant must submit the following in accordance with Council's Works Specification - Civil (Current Version):
- a) Compaction certificates for fill within road reserves.
 - b) Compaction certificates for road sub-grade.
 - c) Compaction certificates for road pavement materials (sub-base and base courses).
 - d) Two (2) contour lot fill diagrams and lot fill compaction certificates. A restriction as to User with Council's standard wording must be placed on filled lots.
 - e) Compliance Certificates from road material suppliers (the relevant certified stockpile number shall be digitally shown from supplier)
- 16.1.8 The Applicant shall ensure the submission to Council of Compliance Certificate(s) and construction inspection reports required by this consent for engineering works prior to any Occupation Certificate. A final inspection report is to be included noting that all works are complete.

When Council has been nominated or defaulted as the principal certifier, final inspections can be arranged through Councils Coordinator of Engineering Approvals contactable on (02) 9839 6000. A final inspection checklist must be completed by the applicant prior to the final inspection.

16.2 **Easements/Restrictions/Positive Covenants — prior to the first subdivision certificate**

- 16.2.1 Any easement(s) or restriction(s) required by this consent must nominate Blacktown City Council as the authority to release vary or modify the easement(s) or restriction(s). The form of easement or restriction created as a result of this consent must be in accordance with the following:

(a) Blacktown City Council's standard recitals for Terms of Easements and Restrictions (Current Version).

(b) The standard format for easements and restrictions as accepted by the Lands Title Office.

- 16.2.2 Restrictions and positive covenants must be endorsed by Council and lodged with NSW Land Registry Services (LRS) over the Stormwater Quality Control devices/system and outlet works.
- 16.2.3 Restrictions and or positive covenant must be endorsed by Council and lodged with NSW Land Registry Services (LRS) over the overland flow-path.
- 16.2.4 The creation of an Easement to Drain Water (as an easement in gross), with a minimum width in accordance with Councils Engineering Guide for Development (current issue), over the following nominated lot free of cost to Council. The easement must be created under the *Conveyancing Act 1919* and have the nominated lot(s) burdened and have the Council, as public authority, benefited.

Nominated Lot(s) Burdened: 44 (being the RE1 land)

Public authority benefited: The Council

The easement is to provide for the temporary drainage arrangement shown in drawing 2019026 – C22 I (Samana Blue Engineering).

The easement may provide that the registered proprietor of the burdened land may release the easement when the regional storm water treatment infrastructure, contemplated by the voluntary planning agreement (required under deferred commencement condition 0.1), has been completed, such that the temporary basin on lot 44 is no longer required.

- 16.2.4A The creation of an Easement to Drain Water limited such that it may only be used to provide for the interim drainage arrangement shown in drawings 2019026 – C35 H and 2019026 – C36 H (Samana Blue Engineering) with a minimum width as shown on those drawings over the following nominated lots free of cost to Council. The easements must be created under the *Conveyancing Act 1919* and have the nominated lots burdened and Lot 132 DP 208203 benefited.

Nominated Lots Burdened: The residual lots that are the subject of development as part of stage 5 (and, prior the creation of the residual lot on the southern boundary in the second subdivision) the land comprising lots 2 and 3 in 'Plan of Proposed Subdivision of Lot 132 in DP 208203' – Stage 3).

The easements may provide that the registered proprietor of the burdened land may release the easement when the ground level on the benefited land has been filled such that there is no longer a need for the relevant burdened lot to be subject to overland flow.

- 16.2.5 All Section 88B restrictions and covenants created, as part of this consent shall contain a provision that they cannot be extinguished or altered except with the consent of Blacktown City Council

16.3 **Bonds/Securities/Payments in Lieu of Works**

- 16.3.1 The payment to Blacktown City Council of a monetary contribution in lieu of works for the placement of the final layer of asphaltic concrete (AC) on the new

road works. The amount will be calculated at Council's approved rate upon request and following issue of a Construction Certificate for the work.

- 16.3.2 A maintenance security of 5% of the value of the required engineering works must be lodged with Council prior to the practical completion of the works. Council will hold this security for a period of at least twelve months.

- a) In the case of subdivision - This period commences at the date of registration of the plan of subdivision for each stage.
- b) In the case where no subdivision occurs - This period commences at the date of practical completion of the development.

This maintenance period may be extended in the following situations to allow for the completion of i) necessary maintenance and or ii) all outstanding minor works.

- 16.3.3 Concrete path paving must not be placed until not less than 75% of the lots have been built upon or until approved in writing by Council. The applicant has the option of lodging a security deposit for the works, or paying a monetary payment in lieu of works based upon Council's Goods and Pricing Schedule. The security will be released upon satisfactory completion of the works.

- 16.3.4 Where Council has granted approval to the Applicant to providing security in lieu of outstanding works a security, in the form of a bank guarantee or a cash deposit, shall be lodged with Council to cover outstanding works required by this consent. The security amount will be calculated at Council's approved rate upon request.

16.4 **Inspections**

- 16.4.1 Any additional Council inspections beyond the scope of any Compliance Certificate package and needed to verify full compliance with the terms of this consent will be charged at the individual inspection rate nominated in Council's Fees and Charges Schedule.

16.5 **CCTV Inspection of Stormwater Drainage Structures**

- 16.5.1 All road stormwater drainage structures (pipelines and pits) must be inspected via CCTV on completion of the provision of all public utility services in accordance with Council's current Works Specification Civil. CCTV reports must be submitted to Council in the form of a DVD of the inspection, a hard copy printout of the SEWRAT (or equivalent) report and a certified CCTV statement in accordance with section 6.8 of Council's Works Specification Civil indicating that any defects identified by this inspection have been rectified.

17 **PRIOR TO SUBDIVISION CERTIFICATE**

17.1 **Consent Compliance**

- 17.1.1 A Subdivision Certificate shall not be issued until all conditions of this consent relevant to the given stage have been satisfied unless agreed to by Council or allowed by other conditions .

17.2 Site Access

- 17.2.1 All lots shall have access from a dedicated public road. In this regard, all proposed roads shall be dedicated as public road free of cost to Council.

Any future substation or other utility installation required to service the approved subdivision/development shall not under any circumstances be sited on a future public road. Any proposal to locate a proposed substation or other utility installation on a future public road shall be negotiated with and fully endorsed by the relevant Council Directorates.

17.3 Road Damage

- 17.3.1 The cost of repairing any damage caused to Council's assets in the vicinity of the subject site as a result of the development works be met in full by the applicant/developer.

Note: Should the cost of damage repair work not exceed the road maintenance bond, Council will automatically call up the bond to recover its costs. Should the repair costs exceed the bond amount a separate invoice will be issued.

17.4 Security

- 17.4.1 An acceptable security (bond) guaranteeing the future completion of the road sealing works shall be lodged with Council. The bond amount is to be calculated at the asphaltic contribution rate current at the time and is to be accompanied by Council's standard Deed of Agreements for Bonds.

17.5 Asset Management

- 17.5.1 Any Subdivision Certificate application lodged with Council or an application for practical completion shall be accompanied by Council's Form SEW20. A copy of Form SEW20 will be sent by Council with the approved Construction Certificate. A copy can also be found in Council's "Engineering Guide for Development 2005".

- 17.5.2 An amount of \$915 per pole is to be paid to Council for the ongoing maintenance of the black powder coated light poles, street name poles and bus shelters proposed in this subdivision. This amount is to be paid prior to the release of the Linen Plan. This amount is valid only until 30 June 2020, upon which this amount will be updated in accordance with Council's adopted fee structure at the time. Any enquiries regarding this fee are to be directed to the Maintenance Section of the City Assets Directorate.

The manufacturer of the light poles/street name poles/bus shelters is to provide written certification that all structures have been black powder coated to the satisfaction of Council's Development Services Engineers prior to installation.

17.6 Service Authority Approvals

- 17.6.1 The following documentary evidence shall be obtained and forwarded to the Principal Certifying Authority prior to the release of the Subdivision Certificate:

(a) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must

be obtained. Please refer to the "Building Plumbing and Developing" Section of the website www.sydneywater.com.au, then follow the "Developing Your Land" link or telephone 13 20 92 for assistance. Following application a "Notice of Requirements" will advise of water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design. The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the release of the plan of subdivision.

- (b) A Notification of Arrangement" Certificate from Integral Energy, stating that electrical services, including the provision of street lighting, have been made available to the development.
- (c) A written clearance from Telstra or any other recognised communication carrier, stating that services have been made available to the development or that arrangements have been made for the provision of services to the development.

17.7 Fee Payment

- 17.7.1 Any fee payable to Council as part of any Construction, Compliance or Subdivision Certificate or inspection associated with the development (including the registration of privately issued certificates) shall be paid in full.

17.8 Additional Inspections

- 17.8.1 Any additional Council inspection services provided beyond the scope of any Compliance Certificate or inspection package and required to verify full compliance with the terms of this consent, will be charged at the individual inspection rate nominated in Council's Fees and Charges Schedule and shall be paid to Council.

17.9 Final Plans

- 17.9.1 The submission of a final plan of subdivision, together with 7 exact copies and the appropriate fee. The final plan of subdivision will not be released until all conditions of this determination have been complied with.

17.10 Waste Matters

- 17.10.1 The applicant must prepare and provide to Council for approval an instrument, substantially on the terms set out below and compliant with the requirements of NSW Land Registry Services, which will create a public positive covenant pursuant to section 88E of the Conveyancing Act 1919 on all lots within the development providing for the management and collection of all forms of garbage, organic waste and recycling from each of those lots.

The public positive covenant must require the lot owners to covenant on behalf of themselves and all occupants of the lots to:

- a) store all forms of garbage, organic waste and recycling within the appropriate garbage bins on their respective lots;
- b) place all garbage, organic waste and recycling bins in the designated communal garbage, organic waste and recycling collection area no earlier than 2pm the day before the scheduled collection time for that area; and

collect and return the empty garbage, organic waste and recycling bins to their respective lots no later than 7pm on the day collection has taken place; and

- c) place whitegoods and large household items in the designated communal bulky waste collection area the evening before the date allocated by the Prescribed Authority for the collection of such items..
- d) Communal areas are defined as any area where more than 2 bins from the subject lot are presented on the frontage of that lot (i.e. they have come from elsewhere as suitable truck access cannot be accommodated).

The public positive covenant must:

- a) contain a plan, compliant with the requirements of Land Registry Services, indicating the designated communal area/s within the development for the collection of garbage, organic waste, recycling and bulky waste from all the lots within the development, with such designated communal collection area/s being in the location shown on the plans annexed to this consent;
- b) provide for the lot owners (on behalf of themselves and all occupants of the lots) to release the Prescribed Authority from, and not make any claim or demand or commence any proceedings (including without limitation in nuisance) against the Prescribed Authority in relation to any noise, debris, damage to property or other issue arising directly or indirectly from waste collection activities carried on by the Prescribed Authority or any agent acting on its behalf; and
- c) provide that the positive public covenant cannot be released, varied or modified without the Prescribed Authority's consent.

These provisions must be put into effect prior to the release of the subdivision certificate for the final residential lots and the applicant must ensure that the public positive covenant is registered with the plan of subdivision for the development.

Terms of Positive Public Covenant

- 1) The Registered Proprietor from time to time of the Lot Burdened covenants personally and on behalf of all occupants of the Lot Burdened in favour of the Prescribed Authority under section 88E of the Conveyancing Act 1919 to do the following:
 - a) store all forms of garbage, organic waste and recycling within the appropriate garbage bin areas designated on the plan for the Lot Burdened;
 - b) place all garbage, organic waste and recycling bins in the communal garbage, organic waste and recycling collection area, designated on the plan for the Lot Burdened, no earlier than 2pm the day before the scheduled collection time; collect and return the empty garbage, organic waste and recycling bins to the Lot Burdened no later than 7pm on the day collection has taken place;
 - c) place whitegoods and large household items in the communal bulky waste collection area, designated on the plan for the Lot Burdened, the evening before the date allocated by the Prescribed Authority for the collection of such items. Communal bulky waste collection area is any area where bin massing will occur. Bin massing is defined as a collection point housing

more than 2 bins from that particular lot (that is, the bins have come from elsewhere);

- d) The Owner of the lot burdened acknowledges that the bin storage area will accommodate a communal bin pad for the collection of waste bins weekly and recycling bins fortnightly, on collection day. The number of bins will exceed the two belonging to the owner of the lot burdened and will include two bins for every lot entitled to place bins in the bin storage area in accordance with Restriction on the Use of Land numbered # #; and
- e) release the Prescribed Authority from, and not make any claim or demand or commence any proceedings (including without limitation in nuisance) against the Prescribed Authority in relation to any noise, debris, damage to property or other issue arising directly or indirectly from waste collection activities carried on by the Prescribed Authority or any agent acting on its behalf.

- 2) This positive public covenant cannot be released, varied or modified without the prior written consent of the Prescribed Authority.

The terms of the public positive covenant are to be approved by Council prior to the issue of the relevant subdivision certificate or registration of the plan of subdivision. The applicant/developer should ensure that all lots burdened by the public positive covenant are clearly identified on the plan of subdivision. All reasonable costs incurred by Council to review and approve the terms of the public positive covenant shall be met in full by the applicant/developer.

Temporary truck turning heads must be maintained to Council's satisfaction. No hard stand areas are to be removed until the road network has been extended to the south.

An easement or public positive covenant is required to Council's satisfaction over lots 17, 18, 25, 26, 31, 32, 37, 38, 42 and 43 as they adjoin the required temporary turning heads which aim to provide safe truck access and turning around the site. These easements or public positive covenants can only be released, varied or modified by Council and must not be released, varied or modified until the surrounding road network is completed and waste collection vehicles can move around the site in a forward direction.

17.10A Site Contamination

- 17.10A.1 Prior to the issue of the Subdivision Certificate, an EPA recognised accredited geoscientist is to validate the site as suitable for residential development in accordance with the strict residential use criteria as set out in the National Environment Protection (Assessment of Site Contamination) Measure (NEPM) 1999 as amended 2013.

17.11 Engineering Matters

17.11.1 Surveys/Certificates/Works As Executed plans

- 17.11.1.1 A Work-as-Executed (WAE) plan signed by a Registered Engineer (NER) or a Registered Surveyor must be submitted to Council when the engineering works are completed. A colour hardcopy (A1 size) and softcopy (on a CD/USB with file format .PDF) of the WAE plans are to be submitted to Council. All

engineering Work-as-Executed plans MUST be prepared on a copy of the original, stamped Construction Certificate plans for engineering works.

- 17.11.1.2 A Certificate shall be submitted by a Registered Surveyor indicating that all pipelines and associated structures lie wholly within any easements required by this consent.
- 17.11.1.3 A certificate from a Registered Engineer (NER) must be obtained and submitted to Council verifying that the constructed Stormwater Quality Control system has been constructed in accordance with Blacktown Council's DCP Part J – Water Sensitive Urban Design and Integrated Water Cycle Management.
- 17.11.1.4 The Applicant must submit the following in accordance with Council's Works Specification - Civil (Current Version):
- a) Compaction certificates for fill within road reserves.
 - b) Compaction certificates for road sub-grade.
 - c) Compaction certificates for road pavement materials (sub-base and base courses).
 - d) Two (2) contour lot fill diagrams and lot fill compaction certificates. A restriction as to User with Council's standard wording must be placed on filled lots.
 - e) Compliance Certificates from road material suppliers (the relevant certified stockpile number shall be digitally shown from supplier).
- 17.11.1.5 The submission to Council of Compliance Certificate(s) and construction inspection reports required by this consent for engineering works. A final inspection report is to be included noting that all works are complete.

When Council has been nominated or defaulted as the nominee for engineering compliance. Final inspections can be arranged through Councils Coordinator of Engineering Approvals contactable on (02) 9839 6263. A final inspection checklist must be completed by the applicant prior to the final inspection.

- 17.11.1.6 Written evidence is to be provided that the registered owner has entered into a minimum five (5) year signed and endorsed maintenance contract with a reputable and experienced cleaning contractor for the maintenance of the Bio-retention Basin and Silt traps. The maintenance contract is to contain a requirement that the filter cartridges must only be maintained or replaced by Ocean Protect. The Applicant must forward a copy of the signed and endorsed contract(s) and maintenance contractor(s) details to Council's WSUD Compliance Officer at WSUD@blacktown.nsw.gov.au
- 17.11.1.7 A Subdivision Certificate for proposed Lots 20, 26, 32, 38, and 43 (along the southern boundary of the site) must not be issued until the final land form of the adjoining land to the south (Lot 2812 DP 1253963) has been completed and/or overland flow from that Lot 2812 has been suitably diverted from the subject site by an approved and constructed drainage system.

In this regard proposed Lots 20, 26, 32, 38, and 43 shall be created as a single residue lot connected by a vinculum.

- 17.11.1.8 A Chartered Civil Engineer registered with NER, is to certify that:
- a. all the requirements of the approved drainage plan have been undertaken;

- b. the temporary bioretention protection system has been installed to enable construction of a future minimum filter media area of 140m² for the bioretention basin clear of pits, flow spreaders and scour protection.
- c. The bioretention basin is enclosed with a minimum 1.0mm HDPE or equivalent liner with geotextile under;
- d. The bioretention subsoil lines are un-socked slotted PVC laid at 0.5% with a minimum 50 mm gravel cover;
- e. all the signage and warning notices have been installed;
- f. the maximum depth of flow in the gutter is less than 200 mm for all 1 in 100 year ARI storm events; and
- g. a copy of the certification and the works-as-executed drainage plan has been provided to Council.

17.11.2 Easements/Restrictions/Positive Covenants

17.11.2.1 Subject to the conditions of this development consent, any easement(s) or restriction(s) required by this consent must nominate Blacktown City Council as the authority to release vary or modify the easement(s) or restriction(s). The form of easement or restriction created as a result of this consent must be in accordance with the following:

(a) Blacktown City Council's standard recitals for Terms of Easements and Restrictions (Current Version).

(b) The standard format for easements and restrictions as accepted by NSW Land Registry Services (LRS).

17.11.2.2 Restrictions and positive covenants must be endorsed by Council and lodged with NSW Land Registry Services (LRS) over the Stormwater Quality Control devices/system and outlet works. The covenant requirements are to include the submission of an annual report on water treatment before 1 September each year. Documentary evidence of this LRS lodgement shall be submitted to Council.

17.11.2.3 Restrictions and positive covenant must be endorsed by Council and lodged with NSW Land Registry Services (LRS) over the overland flow-path. Documentary evidence of this LRS lodgement shall be submitted to Council.

17.11.2.4 The creation of Easements in Gross to Drain Water from the downstream ends of Roads 1 and 4, with a minimum width in accordance with Councils Engineering Guide for Development (current issue), over the following nominated lot(s) free of cost to Council. The easement must be created under the *Conveyancing Act 1919* and have the nominated lot(s) burdened and each and every lot upstream benefited.

Nominated Lot(s) Burdened: Lot 93 DP208203
Benefited: Blacktown City Council.

17.11.2.5 All Section 88B restrictions and covenants created, as part of this consent shall contain a provision that they cannot be extinguished or altered except with the consent of Blacktown City Council, subject to other conditions of this development consent.

- 17.11.2.6 A Restriction as to User over the consolidated residue Lot consisting of proposed Lots 20, 26, 32, 38, and 43 shall be created under Section 88B of the Conveyancing Act 1919 in the following terms:

No further development of the lot burdened is to take place unless until the final land form of the adjoining land to the south (Lot 2812 DP 1253963) has been completed and/or overland flow from that Lot 2812 has been suitably diverted from the subject site by an approved and constructed drainage system.

NOTE: The final wording of the recital of the Restriction as to User is to be to Council's satisfaction.

- 17.11.2.7 Provide a Positive Covenant and Restriction to User over the area covered by the Vegetation Management Plan to ensure ongoing maintenance of the area. The Positive Covenant and Restriction to User must be registered with NSW Land Registry Services.

17.11.3 **Dedications**

- 17.11.3.1 Dedication at no cost to Council of 5m x 5m splay corners on allotments at each street intersection including future intersections indicated on the ILP plan.

17.11.4 **Bonds/Securities/Payments in Lieu of Works**

- 17.11.4.1 The payment to Blacktown City Council of a monetary contribution in lieu of works for the placement of the final layer of asphaltic concrete (AC.) on the new road works. The amount will be calculated at Council's approved rate upon request and following issue of a Construction Certificate for the work.

- 17.11.4.2 A maintenance security of 5% of the value of the required engineering works must be lodged with Council prior to the practical completion of the works. Council will hold this security for a period of at least twelve months.

(a) In the case of subdivision - This period commences at the release of the final plan of subdivision. (Issue of Subdivision Certificate)

(b) In the case where no subdivision occurs - This period commences at the date of practical completion of the development.

This maintenance period may be extended in the following situations to allow for the completion of i) necessary maintenance and or ii) all outstanding minor works.

- 17.11.4.3 Concrete path paving must not be placed until not less than 75% of the lots have been built upon or until approved in writing by Council. The applicant has the option of lodging a security deposit for the works, or paying a monetary payment in lieu of works based upon Council's Goods and Services Pricing Schedule. The Security will be released upon satisfactory completion of the works.

- 17.11.4.4 Where Council has granted approval to the Applicant of providing security in lieu of outstanding works a security, in the form of a bank guarantee or a cash deposit, shall be lodged with Council to cover outstanding works required by this consent. The security amount will be calculated at Council's approved rate upon request

- 17.11.4.5 The Applicant must pay to Council a Bioretention Construction Security equal to 150% of the Bioretention Construction Cost Estimate as required by Conditions 6.11.2 prior to the release of any subdivision certificate.
- 17.11.4.6 The Applicant must pay to Council a Restoration Plan Security equal to 200% of the Restoration Plan Cost Estimate as required by Condition 6.10.7 prior to the release of any subdivision certificate.
- 17.11.5 **Inspection of Work**
- 17.11.5.1 All road stormwater drainage structures (pipelines and pits) must be inspected via CCTV on completion of the provision of all public utility services in accordance with Council's current Works Specification Civil. CCTV reports must be submitted to council in the form of a DVD of the inspection, a hard copy printout of the SEWRAT (or equivalent) report and a certified CCTV statement in accordance with section 6.8 of Council's Works Specification Civil indicating that any defects identified by this inspection have been rectified.

18 OPERATIONAL (PLANNING)

18.1 Use of Premises

- 18.1.1 The development shall not be used or converted for use for any purpose other than that:
 - (a) Granted consent by Council's Notice of Determination, or
 - (b) Which is "Exempt Development" under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 or other NSW or Council planning instrument.