



Land and Environment Court New South Wales

Case Name: **Emcon Group Pty Ltd v Randwick City Council (No 2)**

Medium Neutral Citation: [2021] NSWLEC 1549

Hearing Date(s): 9 – 10 August 2021

Date of Orders: 30 September 2021

Date of Decision: 30 September 2021

Jurisdiction: Class 1

Before: Walsh C

Decision: The Court orders that:
(1) The appeal is upheld.
(2) Development consent is granted to DA/465/2020 for demolition of existing structures and construction of a part 3 and part 4 storey residential flat building containing 3 apartments, ground level parking, landscaping and associated works at 132 Marine Parade, Maroubra subject to conditions of consent at Annexure 'A'.
(3) Exhibits 1, 2, and F are returned.

Catchwords: DEVELOPMENT APPLICATION – residential apartment development – external wall height – view loss – view sharing – neighbour impacts – alternative designs

Legislation Cited: Environmental Planning and Assessment Act 1979, s 8.7
Randwick Local Environmental Plan 2012 cl 4.3, 4.4
State Environmental Planning Policy No 55—
Remediation of Land cl 7

Cases Cited: Tenacity Consulting v Warringah (2004) 134 LGERA 23; [2004] NSWLEC 140

Texts Cited: Randwick Development Control Plan 2013

Category: Principal judgment

Parties: Emcon Group Pty Ltd (Applicant)
Randwick City Council (Respondent)

Representation:

Counsel:

R White (Applicant)

M Harker (Respondent)

Solicitors:

Madison Marcus Law Firm (Applicant)

Randwick City Council (Respondent)

File Number(s):

2020/350474

Publication Restriction:

No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal brought under s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the deemed refusal by Randwick City Council (Council) of Development Application No. DA/465/2020 (DA) seeking development consent for demolition of existing improvements and construction of a residential flat building and associated works at 132 Marine Parade, Maroubra (site).

Proposed development

- 2 The DA, with modifications incorporated into amending plans, seeks consent for demolition of the existing dwelling on the site and the construction of a part 3 and part 4 storey residential flat building comprising three units, with vehicle access off Marine Parade.
- 3 Parking would be provided at the ground/basement level, which would also accommodate the lobby.
- 4 The first, second and third floor levels are almost identical in design and layout and comprise a single 3-bedroom apartment per level. Each apartment level is provided with private balconies oriented to the south looking over Marine Parade towards Maroubra Beach. The rear private open space is proposed for the exclusive use of the level one unit.

Site and setting

- 5 I mostly rely on Council's Amended Statement of Facts and Contentions (Ex 4) for the descriptive material which follows.
- 6 The site is legally described as Lot 15 DP 5463, Lot 100 DP 1267550 and has a moderate fall from the rear to the front of approximately 1.93m. The site is irregular in shape with an area of 545.6m² and a front boundary width of 19.9m, rear boundary width of 15.94m, eastern side boundary width of 28.59m, western boundary side boundary width of 33.46m.

- 7 Development surrounding the site is predominately medium density residential accommodating 3 to 4 storey residential flat buildings. The built form varies in terms of scale, form and age.

Planning framework

- 8 The site and locality are zoned R3 Medium Density Residential under Randwick Local Environmental Plan 2012 (RLEP). The proposal is permissible with consent.
- 9 The objectives of the R3 zone are as follows:
- 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 recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.
 - To protect the amenity of residents.
 - To encourage housing affordability.
 - To enable small-scale business uses in existing commercial buildings.
- 10 The maximum permissible height of buildings for the site is 12m under cl 4.3(2) of RLEP. There is no dispute that the proposal complies with this control.
- 11 The maximum permissible floor space ratio (FSR) for a building on the site is 0.9:1 under cl 4.4(2) of RLEP. An FSR of 0.85:1 is indicated in the plans before the Court (Ex E).
- 12 Randwick Comprehensive Development Control Plan 2013 (RDCP) also applies.

Issues

- 13 View loss was the primary concern in this matter. Related issues from Council were: (1) the non-compliance of the proposal with a wall height control contained in RDCP and (2) what was seen to be an inadequate attention to design alternatives. There was also a concern in regard to filed draft conditions in regard to visual privacy impacts to the rear.
- 14 The experts providing evidence to the Court in this matter were D Waghorn for the Applicant and S Faridy for Council, each having expertise in urban planning.

View loss and related considerations

- 15 View loss will be experienced by neighbours to the rear, or north, of the site. As alluded to at [7], the properties to the rear are occupied by residential flat buildings. It is particular residential units at 43 and 45 Bond Street which are of direct concern, with a number of residential units enjoy high quality views towards the beach at present. It is clear that this enjoyment is in large part related to the under-developed status of the site, occupied as it is by a single dwelling in a setting where significant scale residential flat building development is permissible under RLEP. The central question for this hearing is the reasonableness of the extent of view loss in all of the circumstances that apply.
- 16 There is a good degree of agreement on the part of the experts on the particulars of the view loss impact on the affected neighbouring properties. Where the experts disagreed was on this question of reasonableness.
- 17 There were five residential units which were seen to be most relevant and which were given attention in regard to the view loss question. These were at 5/45 and 6/45 Bond Street, and 6/43, 10/43 and 11/43 Bond Street. The experts agreed that a View Impact Assessment prepared by AE Design Partnership (Ex C) was "accurate", positioning (through its view impact modelling from various vantage points) the experts to express their own opinions in regard to view loss impact (Ex 2 par 7.1). I further note that there was an update to the view impact modelling undertaken as a consequence of certain amendments to the plans before the Court. The updated view impact modelling was tendered as Ex F.

- 18 The experts considered the four-step view affectation assessment process as developed by then Senior Commissioner Roseth in *Tenacity Consulting v Warringah* (2004) 134 LGERA 23; [2004] NSWLEC 140 (*Tenacity*), and subsequently adopted as a planning principle by the Court. The table at Figure 1 was prepared by the experts as a summary of the first three assessment steps of *Tenacity*, in regard to which there was considerable agreement.

| Address | Location | Boundary for view | DW Impact | SF Impact |
|-------------------|--|-------------------|-----------|-----------------|
| 5/45 Bond Street | First Floor balcony from master bedroom | Rear | Severe | Severe |
| 6/43 Bond Street | First floor master bedroom | Side | Severe | Severe |
| 6/45 Bond Street | First floor balcony from master bedroom | Rear | Severe* | Severe* |
| 10/43 Bond Street | Second floor living room | Side | Moderate | Moderate-Severe |
| 11/43 Bond Street | Second floor balcony from master bedroom | Side | Moderate | Moderate-Severe |

* The severe rating is provided based on the completion of DA 196/2018 for No. 130A Marine Parade

Figure 1 - Summary table responding to *Tenacity* steps 1-3 as prepared by the experts with "DW Impact" referencing Mr Waghorn's opinion and "SF Impact" referencing Mr Faridy's opinion (Ex 2 Table 1)

- 19 The fourth *Tenacity* assessment step is concerned with the reasonableness of the impact. I reproduce [29] of *Tenacity* in full below:

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

- 20 The experts referenced the three different points to the fourth *Tenacity* step, concerned with assessing the reasonableness of the impact, which I summarise as follows (see *Tenacity* at [29]):

- Point 1 - Compliance, or otherwise, with planning controls.
- Point 2 - If there is a non-compliance, then even a moderate impact may be considered unreasonable.
- Point 3 - For complying proposals: (a) "whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours to bring about impact", and (b) "if the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable".

21 It was agreed that the proposal complied with RLEP's building height (12m) and FSR controls and front, side and rear setback controls under RDCP. There was a (partial) non-compliance with RDCP's wall height control of up to 1.5m towards the front of the proposed building.

22 Mr Waghorn believed the most significant control, impacting view sharing, to be cl 4.3 of RLEP "which anticipates a 12m height of buildings development standard over the site" (Ex 2 par 7.16). In regard to the wall height control in RDCP, Mr Waghorn believed that "it is the compliant portions of the proposal that are having a moderate-severe impact on the views for properties to the rear" (Ex 2 par 7.9), and that even if the proposal were modified to achieve full compliance with the wall height control and provide for a fully compliant building envelope (Ex 2 par 7.10):

"... the only properties to benefit would be No. 10 & 11/43 Bond Street which are the least affected by the proposed development in terms of overall views from those assessed. For all other properties to the rear, insistence on compliance with the wall height control would not result in any additional views as the rear elevation is compliant with the wall height and setback requirements or will only improve views towards the sky."

23 Mr Waghorn believed that requiring compliance with the wall height control would result in "a disproportionate reduction to the development potential" and that this would "achieve a minor view gain (to) the two properties that are least

affected by the proposed development in terms of views from those assessed” (Ex 2 par 7.13).

- 24 Mr Faridy highlighted the non-conformance with the RDCP wall height control and believed there were “more skilfull” design opportunities which would provide the applicant with the same or similar development potential and amenity and reduce the impact on the views of neighbours. I will give attention to these points in my consideration, below.

Consideration

Interpretation of RDCP wall height control

- 25 In regard to Point 1 of the fourth step of *Tenacity* at [20], concerned as it is with reasonableness of view loss impact, it is clear that there is a numerical control relating to wall height which the proposal exceeds (10.5m as measured to the topmost point of an external wall “taken to be the underside of the eaves or the highest point of a parapet” (Section 4.4 of Part C2 of RDCP). The experts agree the wall height numerical control exceedance is a maximum of “1.50m when measured to the top of the roof or 1.28m when measured to the underside of the roof” (Ex 2 par 3.1), with Mr Waghorn seemingly accepting the maximum non-conformance as 1.5m.

- 26 Before considering any impacts associated with non-conformance, it is appropriate to first turn to what is behind the wall height control. The key point of disagreement related to the third wall height control objective and only a particular element of that. The objective of relevance is as follows (Section 4.4 of Part C2 of RDCP):

“• To control the bulk and scale of development and minimise the impacts on the neighbouring properties in terms of overshadowing, privacy and visual amenity.”

- 27 Mr Faridy’s concern was in relation to “visual amenity” (Ex 2 par 3.2.3):

“My understanding of visual amenity is the view available to adjoining properties just like their solar or privacy amenity. The aim of good planning should be to ensure that such amenities are not diminished or unreasonably

impacted as a result of non-complying or poor building design. To fully understand 'visual amenity' I would compare the existing visual amenity and proposed visual amenity of adjoining properties. The existing significant visual amenity of adjoining properties, in particular those facing Bond Street is silhouette of roof of buildings along Marine Parade and water views beyond. This valuable visual amenity will be lost or diminished and replaced by a solid structure and therefore I do not consider the proposed development as compliant with the third objective of External Wall Height control."

28 Mr Waghorn disagreed (Ex 2 par 3.16):

"In my opinion "visual amenity" when read in conjunction with Objective Dot Point 3 relates to controlling bulk and scale as a result of the wall height, rather than an impact of the development as a whole. The term "visual amenity" therefore relates to the appearance of the building from neighbouring properties. The explanation under Part 4.4 – Wall height of RDCP states that *"external wall height control has been devised to ensure that adequate floor to ceiling height, realistic floor slab and roof construction and basement or semi-basement car parking could be achieved under different topographical conditions"*. The variation to the wall height is towards the front of the property (facing the public domain) and entirely compatible with the scale and wall height of surrounding properties. When considered in the context of the wall height control and that of surrounding buildings, the majority of which breach the wall height control, the impact on the "visual amenity" is minimised and the proposal is not considered to be out of character with surrounding buildings."

29 These matters were also given some consideration in cross-examination. Mr Faridy confirmed his opinion that the term "visual amenity" included view loss, albeit acknowledging there was no express reference to it in Part 4.4. Mr Waghorn indicated his view that the term "visual amenity" in this provision was appropriately understood as, rather than view loss, a reference to the visual amenity effects of the appearance of the building and in particular its "bulk and scale". In this examination, Mr Waghorn was taken to an agreed statement in Ex 4 and that in regard to the fifth zone objective (for the R3 Medium Density Residential Zone under RLEP) which was "(to) protect the amenity of residents", that the experts agreed that this objective would be considered in the expert report under the topic of view loss (Ex 2 par 1.2).

30 I prefer the opinion of Mr Faridy in regard to this question of the interpretation of the term "visual amenity". The term "amenity" is reasonably well understood but perhaps not so often defined in judgments, but I note the first stated definition of the online Macquarie Dictionary definition as follows:

“the quality of being pleasant or agreeable in situation, prospect, disposition, etc.; pleasantness: the amenity of the climate.”

- 31 When considering how the term “visual amenity” might be interpreted, as put at RDCP Part 4.4, I see nothing convincing in the evidence to suggest it have other than a plain interpretation. That is, the agreeableness or pleasantness of the visual aspect of what one might experience from a neighbouring property (in this instance). So it would include both, say, how a new building might be experienced visually (eg whether that being annoying or agreeable in some way say its bulk or scale) or what might be lost or gained, in terms of visual experience, through the erection of a building (eg through loss of a pleasant view or the screening of something disagreeable).
- 32 This finding means that, for me, the non-conformance with the wall height control is in play when the *Tenacity* assessment steps are under consideration. Point 2 of *Tenacity*’s fourth step suggests that if there is a non-compliance then even a moderate impact may be considered unreasonable.

Reasonableness of view loss impact

- 33 The experts have made assessments of the impacts from the neighbouring properties and they are generally severe, or somewhat only less, from each of the viewing points. But those assessments are in consideration of the overall development. I agree with Mr Waghorn that it can only be expected that there will be a considerable degree of view loss from the relevant properties from almost any development of the subject site, under current controls.
- 34 It was useful for me when the parties took the experts to the five viewing positions and I was able to gain a grasp of the extent to which the wall height control under the DCP was influential. That is, the marginal effect of the wall height contravention. The neighbouring properties gaining most attention were Units 10 and 11 at 43 Bond Street. The relevant viewing position from Unit 10 was a living room, and from Unit 11 was a balcony off a master bedroom. There was also moderate attention to Unit 6 at 43 Bond Street (immediately below Unit 10), where the relevant viewing position was from a master bedroom. It seemed to be agreed, and it would seem to me an accurate depiction, that the

wall height contravention makes little or no difference to view loss from 45 Bond Street.

- 35 Having regard to what was described as Point 2 of the fourth principle of *Tenacity* [20], I am of the opinion that the marginal effect of the wall height contravention is of limited significance when the view loss impact is the point of attention. That is to say, the view loss is most considerably associated with the compliant aspects of the proposal. There was a good understanding of the marginal effect from the three key vantage points (VP) available from reference to the material at Ex F, and Ex C. Having considered this material it is clear that the wall height contravention would have a quite small-scale effect on the views from each of the 43 Bond Street viewer positions (VP 4 at 10/43 Bond Street, VP 5 at 11/43 Bond Street and VP 2 from 6/43 Bond Street). I do not see Point 2 of *Tenacity* as indicating “moderate impact” as necessarily unreasonable, only that in some circumstances it may be considered as unreasonable. As a baseline position, and given this small scale of improvement to views which would be available were the western wall height to be entirely compliant with the RDCP requirement (and noting compliance with all other controls), I do not see why this impact would be properly seen as unreasonable. Noteworthy is Council's attention to the views of Malabar Headland and Malabar National Park (ie in contrast to the water views), which I will come to below when considering alternative design solutions.

Consideration of alternative designs

- 36 Point 3 of the fourth principle of *Tenacity* (which is at [20] above) raises the issue of the consideration of alternative designs. While this point is directly concerned with complying proposals, it does warrant attention here. Mr Faridy raised two (“skilful design”) possibilities which he believed would reduce view loss and promote view sharing. The first was to reduce the overall height of the building which would necessitate increased excavation for the site. The second possibility would involve increasing side boundary setbacks among other things.

- 37 The applicant rejected the second possibility as a matter of statutory principle it seemed. That is, by noting the fact of the proposal's compliance with side and rear boundary setback controls. For me, that was not the point. When considering alternative solutions, an applicant is certainly welcome to that alternative (increasing setbacks beyond already compliant configurations) as a means of achieving necessary skilful design alternatives to address impact and a satisfactory design. In regard to the first possibility (building height reduction), on balance, it does not seem to me that this move sufficiently influences the view loss outcome. Here, I am referring to Council's reference to the enjoyment of views of Malabar Headland and Malabar National Park in particular for VP 4 and 5. I am not convinced on the importance of the relatively narrow horizontal field of view of these particular areas that would be retained from the identified viewer positions, through the suggested lowering of the proposed building; noting the (albeit also confined) water views that would be retained between the proposed building and its neighbour to the west (134 Marine Parade). The adverse implications for the proposal principally relate to additional excavation costs and the lowering of residential units generally. Here, I acknowledge again the building's compliance with RLEP building height controls and Mr Faridy's acceptance that the proposal was satisfactory in streetscape character terms.

Conditions

- 38 The conditions filed by Council (without prejudice) which were tendered as Ex 3, were generally agreed by the Applicant. A point of dispute was in relation to visual privacy which centrally involved the treatment of the northern façade windows (to the master bedroom/ensuite on each level) and whether the elevated outdoor deck for Unit 101 was appropriate. Mindful of the provisions of clause 5.3 of RDCP, I generally accept Council's position. As indicated above, there are considerable amenity impacts on the residences to the rear associated with view loss and visual bulk as a consequence of the building massing. The opportunity should be taken to minimise visual privacy impacts which appear very likely, otherwise, under the configuration proposed by the Applicant.

Other issues

39 In regard to State Environmental Planning Policy No 55 – Remediation of Land, and in particular cl 7(1), I note and accept the uncontested advice from the Applicant (Ex A Tab 4 p 41) that the land has been used for residential purposes for an extended timeframe and is not considered to be at risk of contamination. No further consideration is required in this instance.

40 In regard to RLEP, I note and accept:

- With respect to cl 6.1, regarding acid sulfate soils, there are no further requirements in this instance (Ex 4 p 6).
- With respect to cl 6.2, regarding earthworks, there has been due consideration to the matters listed, noting the Applicant's geotechnical report (Ex A Tab 10) and agreed conditions.
- With respect to cl 6.4, regarding stormwater management, I am satisfied with regard to the matters listed at subcl 6.4(3), noting the agreed conditional requirements placed on the development in proposed Condition 21.
- With respect to cl 6.7, regarding foreshore scenic protection, because of the proposal's architectural presentation and siting, and noting that Council did not contest this, I am satisfied that the proposal is located and designed to minimise its visual impact on public areas of the coastline, including views to and from the coast, foreshore reserves, open space and public areas, and, as well, contributes to the scenic quality of the coastal foreshore.
- With respect to cl 6.10, regarding essential services, I am relevantly satisfied with regard to the listed matters given the agreed conditions and the fact that the matters listed were not points of contestation in the parties' agreement with regard to conditions (without prejudice on Council's part in all instances).

- 41 Section 4.15(1)(d) of the EPA Act requires consideration of objecting submissions. Ex 4 references two written submissions and in addition there was one oral submission made on Day 1 of the hearing. View loss and visual privacy were the major issues raised in submissions which were not otherwise addressed in revised plans. Each of these matters are considered in the body of the report.

Conclusion

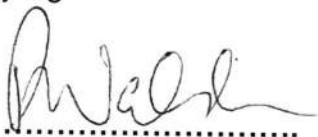
- 42 I am satisfied that the proposal provides an adequate response to the view loss question, and that the objectives of the wall height control are adequately satisfied despite the numerical non-compliance. The proposal warrants conditional approval.

Orders

- 43 The Court orders that:

- (1) The appeal is upheld.
- (2) Development consent is granted to DA/465/2020 for demolition of existing structures and construction of a part 3 and part 4 storey residential flat building containing 3 apartments, ground level parking, landscaping and associated works at 132 Marine Parade, Maroubra subject to conditions of consent at Annexure 'A'.
- (3) Exhibits 1, 2, and F are returned.

I certify that this and the preceding **11** pages are a true copy of my reasons for judgment.



.....

P Walsh

Commissioner of the Court

Annexure A

**DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF
CONSENT**

Development Application No: DA/465/2020

Development: Demolition of existing structures and construction of a part 3 and part 4 storey residential flat building containing 3 apartments, ground level parking, landscaping and associated works.

Site: 132 Marine Parade, MAROUBRA NSW 2035

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

Date of determination: 30 September 2021.

Date from which consent takes effect: Date the consent is registered on the NSW Planning Portal.

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the "applicant" means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the "site", means the land known as 132 Marine Parade, MAROUBRA NSW 2035.

The conditions of consent are as follows:

Development Consent Conditions**GENERAL CONDITIONS**

The development must be carried out in accordance with the following conditions of consent.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of environmental amenity.

Approved Plans & Supporting Documentation

- The development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent:

| Plan | Drawn by | Dated | |
|---|----------------------|----------------|--|
| DA 1004 Issue C | Orosi Design | 9/08/21 | |
| DA 1101 Issue C | Orosi Design | 9/08/21 | |
| DA 1102 Issue C | Orosi Design | 9/08/21 | |
| DA 1103 Issue C | Orosi Design | 9/08/21 | |
| DA 1104 Issue C | Orosi Design | 9/08/21 | |
| DA 1107 Issue C | Orosi Design | 9/08/21 | |
| DA 2001 Issue C | Orosi Design | 9/08/21 | |
| DA 2002 Issue C | Orosi Design | 9/08/21 | |
| DA 2003 Issue C | Orosi Design | 9/08/21 | |
| DA 2004 Issue C | Orosi Design | 9/08/21 | |
| DA 3001 Issue C | Orosi Design | 9/08/21 | |
| Landscape Plan Revision B, Sheet 1 of 4 | Topos Landscape | 9/6/2020 | |
| Landscape Plan Revision B, Sheet 2 of 4 | Topos Landscape | June 2020 | |
| Landscape Plan Revision B, Sheet 3 of 4 | Topos Landscape | June 2020 | |
| Landscape Plan Revision B, Sheet 4 of 4 | Topos Landscape | 4/6/2020 | |
| Traffic and Parking Assessment Report Ref 20120 Issue B | TTPA | September 2020 | |
| Arboricultural Impact Assessment | Lisa Strachan AQF | 6/5/2020 | |

| | | |
|------------------------------|--------------|--|
| BASIX Certificate No. | Dated | |
|------------------------------|--------------|--|

| | | |
|--------------|----------------|--|
| 1102971M_04. | 12 August 2021 | |
|--------------|----------------|--|

Amendment of Plans & Documentation

2. The approved plans and documents must be amended in accordance with the following requirements:
- a. The planter boxes at second and third floor levels shall be deleted and the sliding doors to the master bedrooms be replaced with windows having a sill height of 1.6m measured above the floor level. Alternatively, the window shall be provided with fixed obscure glazing to 1.6m from finished floor level.
 - b. The window for the bedroom behind the laundry for units 101, 201 and 301 along the western elevation shall have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height.
 - c. All vertical louvres along the eastern and western elevation shall be angled and spaced appropriately to prevent any overlooking into the private open space or windows of the adjacent dwellings.
 - d. The rear deck off master bedroom of Unit 101 be deleted and the sliding doors to the master bedroom be replaced with window having a sill height of 1.6m measured above the floor level. Alternatively, the window shall be provided with fixed obscure glazing to 1.6m from finished floor level.
 - e. The Landscape Plans by Topos Landscape, sheets 1-4, rev B, dated 09/06/20, and stamped by Council 11/09/20, must be revised to now be consistent with the amended architectural plans by Orosi, dwg's DA 1001-7041, issue C, dated 28/05/21, with the changes that have been made to be both highlighted and listed numerically.
 - f. Access Report Rev B, dated 20/05/2020 shall be updated to reflect the amended plans as noted in Condition 1 above.
 - g. Geotechnical Report P 1925_01, dated 06/05/2020 shall be updated to reflect the amended plans as noted in Condition 1 above.
 - h. The entry canopy adjacent to Marine Parade boundary shall be deleted.
 - i. The roof area to the west of Unit 101 shall remain non trafficable at all times.
 - j. The fence on the street alignment and in front of the building line along the eastern and western sides of the site shall be a maximum height of 1.0m to maintain reasonable levels of amenity to the adjoining residential development and the streetscape. The remaining side boundary fence and rear boundary fence shall not exceed 1.8m from existing ground level.

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

The following conditions of consent must be complied with before a 'Construction Certificate' is issued by either Randwick City Council or an Accredited Certifier. All necessary information to demonstrate compliance with the following conditions of consent must be included in the documentation for the construction certificate.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent conditions and to achieve reasonable levels of environmental amenity.

Consent Requirements

3. The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.

External Colours, Materials & Finishes

4. The colours, materials and finishes of the external surfaces to the building are to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape. Reflective wall cladding, panels and tiles and roof sheeting. Colour and material selection shall be consistent with and compliment the Foreshore Scenic Protection Area. Details of retaining walls at lower ground level shall also be included.

Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Manager Development Assessments prior to issuing a construction certificate for the development.

Section 7.12 Development Contributions

5. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$2,602,948.00 the following applicable monetary levy must be paid to Council: \$26,029.50.

The levy must be paid in **cash, bank cheque** or by **credit card** prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6999 or 1300 722 542 for the indexed contribution amount prior to payment.

To calculate the indexed levy, the following formula must be used:

$$IDC = ODC \times CP2/CP1$$

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment

CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.

Council's Development Contribution Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.

Compliance Fee

6. A development compliance and enforcement fee of \$2,602.95 shall be paid to Council in accordance with Council's adopted Fees & Charges Pricing Policy, prior to the issue of a Construction Certificate for development.

Long Service Levy Payments

7. The required Long Service Levy payment, under the *Building and Construction Industry Long Service Payments Act 1986*, must be forwarded to the Long Service Levy Corporation or the Council, in accordance with Section 6.8 of the *Environmental Planning & Assessment Act 1979*.

At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$25,000 or more, at the rate of 0.35% of the cost of the works.

Security Deposits

8. The following damage / civil works security deposit requirement must be complied with, as security for making good any damage caused to the roadway, footway, verge or any public place; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 80A(6) of the *Environmental Planning and Assessment Act 1979*:

- \$9,000 - Damage / Civil Works Security Deposit

The damage/civil works security deposit may be provided by way of a cash or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.

The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.

To obtain a refund of relevant deposits, a *Security Deposit Refund Form* is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.

Sydney Water Requirements

9. All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.

The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's waste

water and water mains, stormwater drains and/or easements, and if any further requirements need to be met.

The Tap in™ service provides 24/7 access to a range of services, including:

- Building plan approvals
- Connection and disconnection approvals
- Diagrams
- Trade waste approvals
- Pressure information
- Water meter installations
- Pressure boosting and pump approvals
- Change to an existing service or asset, e.g. relocating or moving an asset.

Sydney Water's Tap in™ online service is available at:
<https://www.sydneywater.com.au/tapin>

The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.

Electricity Substation

10. The applicant must liaise with Ausgrid prior to obtaining a construction certificate (for any above ground works), to determine whether or not an electricity substation is required for the development. Any electricity substation required for the site as a consequence of this development shall be located within the site and shall be screened from view. The proposed location and elevation shall be shown on relevant construction certificate and landscape plans.

Telecommunications infrastructure

11. Prior to the issue of a Construction Certificate in connection with this development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Principal Certifier that arrangements have been made for:
- (i) The installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose, and;
 - (ii) The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

NOTE: Real estate development project has the meanings given in section 372Q of the Telecommunications Act.

Landscape Plans

12. Written certification from a qualified professional in the Landscape industry (must be eligible for membership with a nationally recognised organisation/association) must state that this amended scheme, submitted for the Construction Certificate, complies with the requirements specific above, with both this written statement and adopted plans to then be submitted to, and be approved by, the Principal Certifier.

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

The requirements contained in the following conditions of consent must be complied with and details of compliance must be included in the construction certificate for the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Councils development consent conditions and to achieve reasonable levels of environmental amenity.

Compliance with the Building Code of Australia & Relevant Standards

13. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 of the *Environmental Planning & Assessment Regulation 2000*, it is a *prescribed condition* that all building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
14. Access and facilities for people with disabilities must be provided in accordance with the relevant requirements of the Building Code of Australia, Disability (Access to Premises – Buildings) Standards 2010, relevant Australian Standards and conditions of consent, to the satisfaction of the Certifier.

BASIX Requirements

15. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 97A of the *Environmental Planning & Assessment Regulation 2000*, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.

The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.

The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.

Site stability, Excavation and Construction work

16. A report must be obtained from a suitably qualified and experienced *professional engineer*, which includes the following details, to the satisfaction of the Certifier for the development:-
 - a) Geotechnical details which confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjacent land.
 - b) Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings.

- c) Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration.
- d) The adjoining land and buildings located upon the adjoining land must be adequately supported at all times throughout demolition, excavation and building work, to the satisfaction of the *Principal Certifier*.
- e) Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public roadway or public place) and details must be provided to the *Certifier*.

Traffic conditions

- 17. Adequate provisions are to be made to provide pedestrian visibility and safety. All new walls (and/or landscaping) adjacent to vehicular crossings should not exceed a height of 600mm above the internal driveway level for a distance of 1.5m within the site or new walls (including landscaping) should splayed 1.5 metres by 1.5 metres. Details of compliance, to the satisfaction of the *Principal Certifier*, are to be included in the construction certificate documentation.
- 18. The vehicular access driveways, internal circulation ramps and the carpark areas, (including, but not limited to, the ramp grades, carpark layout and height clearances) are to be in accordance with the requirements of AS2890.1:2004. The Construction Certificate plans must demonstrate compliance with these requirements including the following information
 - Swept paths are to be provided demonstrating satisfactory access into Carspaces labelled 01 & 02 on the architectural plans. If satisfactory access cannot be achieved the adjacent parking aisle is to be widened.

Design Alignment levels

- 19. The design alignment level (the finished level of concrete, paving or the like) at the property boundary for driveways, access ramps and pathways or the like, shall be:
 - **80mm above the top of the existing kerb at all points opposite.**

The design alignment levels at the property boundary as issued by Council and their relationship to the footpath must be indicated on the building plans for the construction certificate. The design alignment level at the street boundary, as issued by the Council, must be strictly adhered to.

Any request to vary the design alignment level/s must be forwarded to and approved in writing by Council's Development Engineers and may require a formal amendment to the development consent via a Section 4.55 application.

Enquiries regarding this matter should be directed to Council's Development Engineer on 9093-6881.

- 20. The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of **\$1134** calculated at

\$57.00 per metre of site frontage. This amount is to be paid prior to a construction certificate being issued for the development.

Stormwater Drainage & Flood Management

21. Stormwater drainage plans have not been approved as part of this development consent. Engineering calculations and plans with levels reduced to Australian Height Datum in relation to site drainage shall be prepared by a suitably qualified Hydraulic Engineer and submitted to and approved by the Principal Certifier prior to a construction certificate being issued for the development. A copy of the engineering calculations and plans are to be forwarded to Council, prior to a construction certificate being issued, if the Council is not the Principal Certifier. The drawings and details shall include the following information:
- a) A detailed drainage design supported by a catchment area plan, at a scale of 1:100 or as considered acceptable to the Council or an accredited certifier, and drainage calculations prepared in accordance with the Institution of Engineers publication, Australian Rainfall and Run-off, 1987 edition.
 - b) A layout of the proposed drainage system including pipe sizes, type, grade, length, invert levels, etc., dimensions and types of all drainage pipes and the connection into Council's stormwater system.
 - c) The separate catchment areas within the site, draining to each collection point or surface pit are to be classified into the following categories:
 - i. Roof areas
 - ii. Paved areas
 - iii. Grassed areas
 - iv. Garden areas
 - d) Where buildings abut higher buildings and their roofs are "flushed in" to the higher wall, the area contributing must be taken as: the projected roof area of the lower building, plus one half of the area of the vertical wall abutting, for the purpose of determining the discharge from the lower roof.
 - e) Proposed finished surface levels and grades of car parks, internal driveways and access aisles which are to be related to Council's design alignment levels.
 - f) The details of any special features that will affect the drainage design eg. the nature of the soil in the site and/or the presence of rock etc.
22. The site stormwater drainage system is to be provided in accordance with the following requirements;
- a) The stormwater drainage system must be provided in accordance with the relevant requirements of Building Code of Australia and the conditions of this consent, to the satisfaction of the *Principal Certifier* and details are to be included in the construction certificate.

- b) The stormwater must be discharged (by gravity) either:
 - i. Directly to the kerb and gutter in front of the subject site in Marine Parade; or
 - ii. Directly into Council's underground drainage system located in Marine parade via a new and/or existing kerb inlet pit and section of pipe if required; or
- c) Should stormwater be discharged to Council's street drainage system the maximum discharge from the site must not exceed **25L/S** for all storm events up to the 1 in 20 year storm event. All stormwater run-off from the site exceeding this amount is to be retained on the site for gradual release to the street drainage system, to the satisfaction of the Principal Certifier.

An overland escape route or overflow system (to Council's street drainage system) must be provided for storms having an average recurrence interval of 100 years (1 in 100 year storm), or, alternatively the stormwater detention system is to be provided to accommodate the 1 in 100 year storm.

- d) Determination of the required cumulative storage (in the on-site detention and) must be calculated by the mass curve technique as detailed in Technical Note 1, Chapter 14 of the Australian Rainfall and Run-off Volume 1, 1987 Edition.

Where possible any detention tanks should have an open base to infiltrate stormwater into the ground. Infiltration should not be used if ground water and/or any rock stratum is within 2.0 metres of the base of the tank.

- e) Should a pump system be required to drain any portion of the site the system must be designed with a minimum of two pumps being installed, connected in parallel (with each pump capable of discharging at the permissible discharge rate) and connected to a control board so that each pump will operate alternatively. The pump wet well shall be sized for the 1% AEP (1 in 100 year), 2 hour storm assuming both pumps are not working.

The pump system must also be designed and installed strictly in accordance with Randwick City Council's Private Stormwater Code.

- f) If connecting to Council's underground drainage system, a reflux valve shall be provided (within the site) over the pipeline discharging from the site to ensure that stormwater from Council drainage system does not surcharge back into the site stormwater system.

- g) Any new kerb inlet pits (constructed within Council's road reserve) are to be constructed generally in accordance with Council's standard detail for the design of kerb inlet pits (drawing number SD6 which is available from Council).
- h) Generally all internal pipelines must be capable of discharging a 5% AEP (1 in 20 year) storm flow. However the minimum pipe size for pipes that accept stormwater from a surface inlet pit must be 150mm diameter. The site must be graded to direct any surplus run-off (i.e. above the 1 in 20 year storm) to the proposed drainage (detention/infiltration) system.
- i) A sediment/silt arrestor pit must be provided within the site near the street boundary prior to discharge of the stormwater to Council's drainage system and prior to discharging the stormwater to any absorption/infiltration system.

Sediment/silt arrestor pits are to be constructed generally in accordance with the following requirements:

- The base of the pit being located a minimum 300mm under the invert level of the outlet pipe.
- The pit being constructed from cast in-situ concrete, precast concrete or double brick.
- A minimum of 4 x 90 mm diameter weep holes (or equivalent) located in the walls of the pit at the floor level with a suitable geotextile material with a high filtration rating located over the weep holes.
- A galvanised heavy-duty screen being provided over the outlet pipe/s (Mascot GMS multipurpose filter screen or equivalent).
- The grate being a galvanised heavy-duty grate that has a provision for a child proof fastening system.
- A child proof and corrosion resistant fastening system being provided for the access grate (e.g. spring loaded j-bolts or similar).
- Provision of a sign adjacent to the pit stating, "This sediment/silt arrestor pit shall be regularly inspected and cleaned".

Sketch details of a standard sediment/silt arrestor pit may be obtained from Council's Drainage Engineer.

- j) The floor level of all habitable, retail, commercial and storage areas located adjacent to any detention and/or infiltration systems with above ground storage must be a minimum of 300mm above the maximum water level for the design storm or alternately a permanent 300mm high water proof barrier is to be provided.

(In this regard, it must be noted that this condition must not result in any increase in the heights or levels of the building. Any variations to the heights or levels of the building will require a new or amended development)

consent from the Council prior to a construction certificate being issued for the development).

- k) The maximum depth of ponding in any above ground detention areas and/or infiltration systems with above ground storage shall be as follows (as applicable):
- i. 150mm in uncovered open car parking areas (with an isolated maximum depth of 200mm permissible at the low point pit within the detention area)
 - ii. 300mm in landscaped areas (where child proof fencing is not provided around the outside of the detention area and sides slopes are steeper than 1 in 10)
 - iii. 600mm in landscaped areas where the side slopes of the detention area have a maximum grade of 1 in 10
 - iv. 1200mm in landscaped areas where a safety fence is provided around the outside of the detention area
 - v. Above ground stormwater detention areas must be suitably signposted where required, warning people of the maximum flood level.

Note: Above ground storage of stormwater is not permitted within basement car parks or store rooms.

- l) A childproof and corrosion resistant fastening system shall be installed on access grates over pits/trenches where water is permitted to be temporarily stored.
- m) A 'V' drain (or equally effective provisions) are to be provided to the perimeter of the property, where necessary, to direct all stormwater to the detention/infiltration area.
- n) Mulch or bark is not to be used in on-site detention areas.
- o) Site discharge pipelines shall cross the verge at an angle no less than 45 degrees to the kerb line and must not encroach across a neighbouring property's frontage unless approved in writing by Council's Development Engineering Coordinator.
- p) The rear boundary shall not be occupied by masonry wall above natural ground level. Any fencing must provide a minimum 150mm gap at bottom to allow passage of surface flows associated with a minor overland flow path.

Site seepage & Groundwater

23. The development must comply with the following requirements to ensure the adequate management of site seepage and sub-soil drainage:

- a) Sub-soil drainage must not be connected or discharged directly or indirectly to Council's street gutter.
- b) Adequate provision is to be made for the ground water to drain around the carpark (to ensure it does not dam or slow the movement of the ground water through the development site).
- c) Sub-soil drainage systems (if provided) must comply with one or more of the following requirements:-
 - i. The system may be connected directly to Council's underground drainage system (but only with the prior written approval of Council, as required under the *Roads Act 1993*).
 - ii. Any sub-soil drainage systems must be restricted from entering the basement areas of the building and the stormwater drainage system, by tanking/waterproofing the basement areas of the building.
 - iii. Sub-soil drainage systems may discharge via infiltration subject to the hydraulic consultant/engineer being satisfied that the site and soil conditions are suitable and the seepage is able to be fully managed within the site, without causing a nuisance to any premises and ensuring that it does not drain or discharge (directly or indirectly) to the street gutter.
- d) Details of the proposed stormwater drainage system including methods of sub-soil drainage, tanking/waterproofing (as applicable) must be prepared or approved by a suitably qualified and experienced *Professional Engineer* to the satisfaction of the Principal Certifier and details are to be included in the construction certificate. **A copy of the proposed method for tanking the basement levels must be forwarded to Council if Council is not the Principal Certifier**

Waste Management

24. A Waste Management Plan detailing the waste and recycling storage and removal strategy for all of the development, is required to be submitted to and approved by Council's Director of City Planning.

The Waste Management plan is required to be prepared in accordance with Council's Waste Management Guidelines for Proposed Development and must include the following details (as applicable):

- The use of the premises and the number and size of occupancies.
- The type and quantity of waste to be generated by the development.
- Demolition and construction waste, including materials to be re-used or recycled.
- Details of the proposed recycling and waste disposal contractors.
- Waste storage facilities and equipment.
- Access and traffic arrangements.

- The procedures and arrangements for on-going waste management including collection, storage and removal of waste and recycling of materials.

Further details of Council's requirements and guidelines, including pro-forma Waste Management plan forms can be obtained from Council's Customer Service Centre.

25. The garbage room shall be sized to contain a minimum of 5 x 240 litre bins (comprising 2 garbage bins, 2 recycle bins, and 1 FOGO) and with adequate provisions for access to all bins. Details showing compliance are to be included in the construction certificate.
26. The waste storage areas are to be provided with a tap and hose and the floor is to be graded and drained to the sewer to the requirements of Sydney Water.

Public Utilities

27. A *Public Utility Impact Assessment* must be carried out to identify all public utility services located on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the building works.

The owner/builder must make the necessary arrangements and meet the full cost for telecommunication companies, gas providers, Ausgrid, Sydney Water and other authorities to adjust, repair or relocate their services as required.

Undergrounding of Site Power

28. Power supply to the proposed development shall be provided via an underground (UGOH) connection from the nearest mains distribution pole in Marine Parade. No Permanent Private Poles are to be installed with all relevant documentation submitted for the construction certificate to reflect these requirements to the satisfaction of the Principal Certifier. The applicant/owner is to liaise with an Ausgrid Accredited Service Provider to carry out the works to the requirements and satisfaction of Ausgrid and at no cost to Council.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

The following conditions of consent must be complied with prior to the commencement of any works on the site. The necessary documentation and information must be provided to the Council or the 'Principal Certifier', as applicable.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of public health, safety and environmental amenity.

Certification and Building Inspection Requirements

29. Prior to the commencement of any building works, the following requirements must be complied with:

- a) a Construction Certificate must be obtained from the Council or an accredited certifier, in accordance with the provisions of the *Environmental Planning & Assessment Act 1979*.

A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.

- b) a *Principal Certifier* must be appointed to carry out the necessary building inspections and to issue an *occupation certificate*; and
- c) a *principal contractor* must be appointed for the building work and the requirements of the *Home Building Act 1989* must be satisfied accordingly; and
- d) the *principal contractor* must be advised of the required *critical stage inspections* and other inspections to be carried out, as specified by the *Principal Certifier*, and
- e) at least two days notice must be given to the Council, in writing, prior to commencing any works.

Home Building Act 1989

30. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 of the *Environmental Planning & Assessment Regulation 2000*, the relevant requirements of the *Home Building Act 1989* must be complied with.

Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.

Dilapidation Reports

31. A dilapidation report (incorporating photographs of relevant buildings) must be obtained from a *Professional Engineer*, detailing the current condition and status of all of the buildings and structures located upon all of the properties adjoining the subject site and any other property or public land which may be affected by the works, to the satisfaction of the *Principal Certifier*.

The dilapidation report must be submitted to the Council, the *Principal Certifier* and the owners of the adjoining/nearby premises encompassed in the report, prior to commencing any site works (including any demolition work, excavation work or building work).

Construction Site Management Plan

32. A *Construction Site Management Plan* must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:

- location and construction of protective site fencing / hoardings;
- location of site storage areas/sheds/equipment;
- location of building materials for construction;
- provisions for public safety;

- dust control measures;
- details of proposed sediment and erosion control measures;
- site access location and construction
- details of methods of disposal of demolition materials;
- protective measures for tree preservation;
- location and size of waste containers/bulk bins;
- provisions for temporary stormwater drainage;
- construction noise and vibration management;
- construction traffic management details;
- provisions for temporary sanitary facilities.

The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works, to the satisfaction of Council.

A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.

Demolition Work Plan

33. A Demolition Work Plan must be prepared for the development in accordance with Australian Standard AS2601-2001, Demolition of Structures and relevant environmental/work health and safety requirements.

The Demolition Work Plan must be submitted to the Principal Certifier, not less than two (2) working days before commencing any demolition work. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.

If the work involves asbestos products or materials, a copy of the Demolition Work Plan must also be provided to Council not less than 2 days before commencing those works.

Construction Noise & Vibration Management Plan

34. A *Construction Noise & Vibration Management Plan*, prepared in accordance with the Environment Protection Authority (EPA) Guidelines for Construction Noise and Assessing Vibration, by a suitably qualified person, is to be developed and implemented prior to commencing site work and throughout the course of construction, in accordance with the following requirements:

- a) Noise and vibration emissions during the construction of the building and associated site works must not result in damage to nearby premises or result in an unreasonable loss of amenity to nearby residents.

Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management strategies.

- b) The *Construction Noise & Vibration Management Plan* must include details of measurements, analysis and relevant criteria and demonstrate that the noise and vibration emissions from the work satisfy the relevant provisions of the *Protection of the Environment Operations Act 1997*, current EPA Guidelines for Construction Noise and Assessing Vibration and Council's conditions of consent.

- c) A further report/correspondence must be obtained from the consultant as soon as practicable upon the commencement of works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the *Construction Noise & Vibration Management Plan* and which demonstrates compliance with relevant criteria.
- d) Any recommendations and requirements contained in the *Construction Noise & Vibration Management Plan* and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to Council and the *Principal Certifier*.

A copy of the *Construction Noise & Vibration Management Plan* and associated acoustic/vibration report/s must be maintained on-site and a copy must be provided to Council and the Principal Certifier accordingly.

Public Liability

- 35. The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$10 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.

Construction Traffic Management

- 36. An application for a 'Works Zone' and Construction Traffic Management Plan must be submitted to Councils Integrated Transport Department, and approved by the Randwick Traffic Committee, for a 'Works Zone' to be provided in Marine Parade for the duration of the demolition & construction works.

The 'Works Zone' must have a minimum length of 12m and extend for a minimum duration of three months. The suitability of the proposed length and duration is to be demonstrated in the application for the Works Zone. The application for the Works Zone must be submitted to Council at least six (6) weeks prior to the commencement of work on the site to allow for assessment and tabling of agenda for the Randwick Traffic Committee.

The requirement for a Works Zone may be varied or waived only if it can be demonstrated in the Construction Traffic Management Plan (to the satisfaction of Council's Traffic Engineers) that all construction related activities (including all loading and unloading operations) can and will be undertaken wholly within the site. The written approval of Council must be obtained to provide a Works Zone or to waive the requirement to provide a Works Zone prior to the commencement of any site work.

- 37. A detailed Construction Site Traffic Management Plan must be submitted to and approved by Council, prior to the commencement of any site work.

The Construction Site Traffic Management Plan must be prepared by a suitably qualified person and must include the following details, to the satisfaction of Council:

- A description of the demolition, excavation and construction works
- A site plan/s showing the site, roads, footpaths, site access points and vehicular movements

- Any proposed road and/or footpath closures
- Proposed site access locations for personnel, deliveries and materials
- Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site)
- Provision for loading and unloading of goods and materials
- Impacts of the work and vehicular movements on the road network, traffic and pedestrians
- Proposed hours of construction related activities and vehicular movements to and from the site
- Current/proposed approvals from other Agencies and Authorities (including NSW Roads & Maritime Services, Police and State Transit Authority)
- Any activities proposed to be located or impact upon Council's road, footways or any public place
- Measures to maintain public safety and convenience

The approved Construction Site Traffic Management Plan must be complied with at all times, and any proposed amendments to the approved Construction Site Traffic Management Plan must be submitted to and be approved by Council in writing, prior to the implementation of any variations to the Plan.

38. Any necessary approvals must be obtained from NSW Police, Roads & Maritime Services, Transport, and relevant Service Authorities, prior to commencing work upon or within the road, footway or nature strip.

All conditions and requirements of the NSW Police, Roads & Maritime Services, State Transit Authority and Council must be complied with at all times

Public Utilities

39. Documentary evidence from the relevant public utility authorities confirming they have agreed to the proposed works and that their requirements have been or are able to be satisfied, must be submitted to the Principal Certifier prior to the commencement of any demolition, excavation or building works.

The owner/builder must make the necessary arrangements and meet the full cost for telecommunication companies, gas providers, Ausgrid, Sydney Water and other service authorities to adjust, repair or relocate their services as required.

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

The following conditions of consent must be complied with during the demolition, excavation and construction of the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of public health, safety and environmental amenity during construction.

Inspections during Construction

40. Building works are required to be inspected by the *Principal Certifier*, in accordance with section 6.5 of the *Environmental Planning & Assessment Act 1979* and clause 162A of the *Environmental Planning & Assessment Regulation 2000*, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.

Building & Demolition Work Requirements

41. The demolition, removal, storage, handling and disposal of products and materials containing asbestos must be carried out in accordance with Randwick City Council's Asbestos Policy and the relevant requirements of SafeWork NSW and the NSW Environment Protection Authority (EPA), including:

- Work Health and Safety Act 2011;
- Work Health and Safety Regulation 2011;
- SafeWork NSW Code of Practice for the Safe Removal of Asbestos;
- Australian Standard 2601 (2001) – Demolition of Structures;
- The Protection of the Environment Operations Act 1997;
- Randwick City Council Asbestos Policy (adopted 13 September 2005).

A copy of Council's Asbestos Policy is available on Council's web site or a copy can be obtained from Council's Customer Service Centre.

Removal of Asbestos Materials

42. Any work involving the demolition, storage or disposal of asbestos products and materials must be carried out in accordance with the following requirements:

- Occupational Health & Safety legislation and WorkCover NSW requirements
- Randwick City Council's Asbestos Policy
- A WorkCover licensed demolition or asbestos removal contractor must undertake removal of more than 10m² of bonded asbestos (or as otherwise specified by WorkCover or relevant legislation). Removal of friable asbestos material must only be undertaken by contractor that holds a current friable asbestos removal licence. A copy of the relevant licence must be provided to the Principal Certifier.
- On sites involving the removal of asbestos, a sign must be clearly displayed in a prominent visible position at the front of the site, containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' and include details of the licensed contractor.
- Asbestos waste must be stored, transported and disposed of in compliance with the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Waste) Regulation 2005*. Details of the landfill site (which must be lawfully able to receive asbestos materials) must be provided to the Principal Certifier.
- A Clearance Certificate or Statement, prepared by a suitably qualified person (i.e. an occupational hygienist, licensed asbestos assessor or other competent person), must be provided to Council and the Principal Certifier upon completion of the asbestos related works which confirms that the asbestos material have been removed appropriately and the relevant conditions of consent have been satisfied.

A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development Section or a copy can be obtained from Council's Customer Service Centre.

Excavations, Back-filling & Retaining Walls

43. All excavations and backfilling associated with the erection or demolition of a building must be executed safely in accordance with appropriate professional standards and excavations must be properly guarded and supported to prevent them from being dangerous to life, property or buildings.

Retaining walls, shoring or piling must be provided to support land which is excavated in association with the erection or demolition of a building, to prevent the movement of soil and to support the adjacent land and buildings, if the soil conditions require it. Adequate provisions are also to be made for drainage.

Details of proposed retaining walls, shoring, piling or other measures are to be submitted to and approved by the Principal Certifier.

Support of Adjoining Land

44. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 E of the *Environmental Planning & Assessment Regulation 2000*, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.

Sediment & Erosion Control

45. Sediment and erosion control measures, must be implemented throughout the site works in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom.

Details must be included in the Construction Site Management Plan and a copy must be provided to the Principal Certifier and Council. A copy must also be maintained on site and be made available to Council officers upon request.

Dust Control

46. During demolition excavation and construction works, dust emissions must be minimised, so as not to result in a nuisance to nearby residents or result in a potential pollution incident.

Adequate dust control measures must be provided to the site prior to the works commencing and the measures and practices must be maintained throughout the demolition, excavation and construction process, to the satisfaction of Council.

Dust control measures and practices may include:-

- ☐ Provision of geotextile fabric to all perimeter site fencing (attached on the prevailing wind side of the site fencing).
- ☐ Covering of stockpiles of sand, soil and excavated material with adequately secured tarpaulins or plastic sheeting.
- ☐ Installation of a water sprinkling system or provision hoses or the like.
- ☐ Regular watering-down of all loose materials and stockpiles of sand, soil and excavated material.
- ☐ Minimisation/relocation of stockpiles of materials, to minimise potential for disturbance by prevailing winds.
- ☐ Landscaping and revegetation of disturbed areas.

Temporary Site Fencing

47. Temporary site safety fencing or site hoarding must be provided to the perimeter of the site throughout demolition, excavation and construction works, to the satisfaction of Council, in accordance with the following requirements:

- a) Temporary site fences or hoardings must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control), or heavy-duty plywood sheeting (painted white), or other material approved by Council.
- b) Hoardings and site fencing must be designed to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises and if necessary, be provided with artificial lighting.
- c) All site fencing and hoardings must be structurally adequate, safe and be constructed in a professional manner and the use of poor quality materials or steel reinforcement mesh as fencing is not permissible.
- d) An overhead ('B' Class) type hoarding is required to be provided to protect the public (unless otherwise approved by Council) if:
 - ☐ materials are to be hoisted (i.e. via a crane or hoist) over a public footway;
 - ☐ building or demolition works are to be carried out on buildings which are over 7.5m in height and located within 3.6m of the street alignment;
 - ☐ it is necessary to prevent articles or materials from falling and causing a potential danger or hazard to the public or occupants upon adjoining land;
 - ☐ as may otherwise be required by WorkCover, Council or the *Principal Certifier*.

Notes:

- ☐ *Temporary site fencing may not be necessary if there is an existing adequate fence in place having a minimum height of 1.5m.*
- ☐ *If it is proposed to locate any site fencing, hoardings, amenities or articles upon any part of the footpath, nature strip or public place at any time, a separate Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services before placing any fencing, hoarding or other article on the road, footpath or nature strip.*

Public Safety & Site Management

48. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with to the satisfaction of Council:
- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
 - b) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
 - c) All building and site activities (including storage or placement of materials or waste and concrete mixing/pouring/pumping activities) must not cause

or be likely to cause 'pollution' of any waters, including any stormwater drainage systems, street gutters or roadways.

Note: It is an offence under the Protection of the Environment Operations Act 1997 to cause or be likely to cause 'pollution of waters', which may result in significant penalties and fines.

- d) Access gates and doorways within site fencing, hoardings and temporary site buildings or amenities must not open outwards into the road or footway.
- e) Bulk bins/waste containers must not be located upon the footpath, roadway or nature strip at any time without the prior written approval of the Council. Applications to place a waste container in a public place can be made to Council's Health, Building and Regulatory Services department.
- f) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.

Site Signage

49. A sign must be erected and maintained in a prominent position on the site for the duration of the works, which contains the following details:

- name, address, contractor licence number and telephone number of the *principal contractor*, including a telephone number at which the person may be contacted outside working hours, or *owner-builder* permit details (as applicable)
- name, address and telephone number of the *Principal Certifier*,
- a statement stating that "unauthorised entry to the work site is prohibited".

Restriction on Working Hours

50. Building, demolition and associated site works must be carried out in accordance with the following requirements:

| Activity | Permitted working hours |
|---|--|
| All building, demolition and site work, including site deliveries (except as detailed below) | <ul style="list-style-type: none"> • Monday to Friday - 7.00am to 5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted |
| Excavating or sawing of rock, use of jack-hammers, pile-drivers, vibratory rollers/compactors or the like | <ul style="list-style-type: none"> • Monday to Friday - 8.00am to 1.00pm only • Saturday - No work permitted • Sunday & public holidays - No work permitted |
| Additional requirements for all development | <ul style="list-style-type: none"> • Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted |

An application to vary the abovementioned hours may be submitted to Council's Manager Health, Building & Regulatory Services for consideration and approval to

vary the specified hours may be granted in exceptional circumstances and for limited occasions (e.g. for public safety, traffic management or road safety reasons). Any applications are to be made on the standard application form and include payment of the relevant fees and supporting information. Applications must be made at least 10 days prior to the date of the proposed work and the prior written approval of Council must be obtained to vary the standard permitted working hours.

Survey Requirements

51. A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building to the satisfaction of the Principal Certifier:

- prior to construction (pouring of concrete) of footings and boundary retaining structures,
- prior to construction (pouring of concrete) of each floor slab,
- upon completion of the building, prior to issuing an *Occupation Certificate*,
- as otherwise may be required by the *Principal Certifier*.

The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council, if the Council is not the Principal Certifier for the development.

Building Encroachments

52. There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place.

Road/Asset Opening Permit

53. Any openings within or upon the road, footpath, nature strip or in any public place (i.e. for proposed drainage works or installation of services), must be carried out in accordance with the following requirements, to the satisfaction of Council:

- a) A *Road / Asset Opening Permit* must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the *Road / Asset Opening Permit* must be complied with.
- b) Council's Road / Asset Opening Officer must be notified at least 48 hours in advance of commencing any excavation works and also immediately upon completing the works (on 9399 0691 or 0409 033 921 during business hours), to enable any necessary inspections or works to be carried out.
- c) Relevant *Road / Asset Opening Permit* fees, construction fees, inspection fees and security deposits, must be paid to Council prior to commencing any works within or upon the road, footpath, nature strip or other public place,
- d) The owner/developer must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the

satisfaction of Council, prior to the issuing of a *final occupation certificate* or occupation of the development (whichever is sooner).

- e) Excavations and trenches must be back-filled and compacted in accordance with AUSPEC standards 306U.
- f) Excavations or trenches located upon a road or footpath are required to be provided with 50mm depth of cold-mix bitumen finish, level with the existing road/ground surface, to enable Council to readily complete the finishing works at a future date.
- g) Excavations or trenches located upon turfed areas are required to be back- filled, compacted, top-soiled and re-turfed with Kikuyu turf.
- h) The work and area must be maintained in a clean, safe and tidy condition at all times and the area must be thoroughly cleaned at the end of each days activities and upon completion.
- i) The work can only be carried out in accordance with approved hours of building work as specified in the development consent, unless the express written approval of Council has been obtained beforehand.
- j) Sediment control measures must be implemented in accordance with the conditions of development consent and soil, sand or any other material must not be allowed to enter the stormwater drainage system or cause a pollution incident.
- k) The owner/developer must have a Public Liability Insurance Policy in force, with a minimum cover of \$10 million and a copy of the insurance policy must be provided to Council prior to carrying out any works within or upon the road, footpath, nature strip or in any public place.

Traffic Management

- 54. Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
- 55. All work, including the provision of barricades, fencing, lighting, signage and traffic control, must be carried out in accordance with the NSW Roads and Traffic Authority publication - 'Traffic Control at Work Sites' and Australian Standard AS 1742.3 – Traffic Control Devices for Works on Roads, at all times.
- 56. All conditions and requirements of the NSW Police, Roads & Maritime Services, Transport and Council must be complied with at all times.

Stormwater Drainage

57. Adequate provisions must be made to collect and discharge stormwater drainage during construction of the building to the satisfaction of the Principal Certifier.

The prior written approval of Council must be obtained to connect or discharge site stormwater to Council's stormwater drainage system or street gutter.

Groundwater

58. A separate written approval from Council is required to be obtained in relation to any proposed discharge of groundwater into Council's drainage system external to the site, in accordance with the requirements of Section 138 of the Roads Act 1993.

Vegetation

59. Due to a combination of their small size and insignificance, no objections are raised to removing all vegetation within this development site, so as to accommodate the works in these same areas as shown, subject to full implementation of the approved/amended Landscape Plans.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

The following conditions of consent must be complied with prior to the 'Principal Certifier' issuing an 'Occupation Certificate'.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent and to maintain reasonable levels of public health, safety and amenity.

Occupation Certificate Requirements

60. An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the *Environmental Planning & Assessment Act 1979*.

Fire Safety Certificates

61. Prior to issuing an interim or Occupation Certificate, a single and complete *Fire Safety Certificate*, encompassing all of the essential fire safety measures contained in the *fire safety schedule* must be obtained and be submitted to Council, in accordance with the provisions of the *Environmental Planning and Assessment Regulation 2000*. The *Fire Safety Certificate* must be consistent with the *Fire Safety Schedule* which forms part of the Construction Certificate.

A copy of the *Fire Safety Certificate* must be displayed in the building entrance/foyer at all times and a copy must also be forwarded to Fire and Rescue NSW.

Structural Certification

62. A Certificate must be obtained from a *professional engineer*, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the *Principal Certifier*. A copy of which is to be provided to Council with the Occupation Certificate.

Sydney Water Certification

63. A section 73 Compliance Certificate, under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. An Application for a Section 73 Certificate must be made through an authorised Water Servicing Coordinator. For details, please refer to the Sydney Water web site www.sydneywater.com.au > Building and developing > Developing your Land > Water Servicing Coordinator or telephone 13 20 92.

Please make early contact with the Water Servicing Co-ordinator, as building of water/sewer extensions may take some time and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifier and the Council prior to issuing an Occupation Certificate or Subdivision Certificate, whichever the sooner.

BASIX Requirements & Certification

64. In accordance with Clause 154B of the *Environmental Planning & Assessment Regulation 2000*, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that any relevant BASIX commitments and requirements have been satisfied.

Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the *Principal Certifier* and Council upon issuing an Occupation Certificate.

Noise Control Requirements & Certification

65. The operation of plant and equipment shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997 and Regulations*.

In this regard, the operation of the plant and equipment shall not give rise to an $L_{Aeq, 15 \text{ min}}$ sound pressure level at any affected premises that exceeds the background $L_{A90, 15 \text{ min}}$ noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A) in accordance with relevant NSW Environment Protection Authority (EPA) Noise Control Guidelines.

66. A report must be obtained from a suitably qualified and experienced consultant in acoustics, which demonstrates and certifies that noise and vibration from any plant and equipment (e.g. mechanical ventilation systems and air-conditioners) satisfies the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority (EPA) Noise Control Manual, Industrial Noise Policy and Council's development consent.

A copy of the report must be provided to the *Principal Certifier* and Council prior to an occupation certificate being issued.

Street and/or Sub-Address Numbering

67. Street numbering must be provided to the front of the premises in a prominent position, in accordance with the Australia Post guidelines and AS/NZS 4819 (2003) to the satisfaction of Council.

If this application results in an additional lot, dwelling or unit, an application must be submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street and/or unit numbers for

the development. The street and/or unit numbers must be allocated prior to the issue of an occupation certificate.

Please note: any Street or Sub-Address Numbering provided by an applicant on plans, which have been stamped as approved by Council are not to be interpreted as endorsed, approved by, or to the satisfaction of Council.

Council's Infrastructure, Vehicular Crossings & Road Openings

68. The owner/developer must meet the full cost for a Council approved contractor to:
- a) Construct a full width concrete heavy duty vehicular crossing and layback at kerb opposite the vehicular entrance to the premises to Council's specifications and requirements.
 - b) Remove any redundant concrete vehicular crossing and layback and to reinstate the area with concrete footpath, turf and integral kerb and gutter to Council's specification.
 - c) Re/construct a concrete footpath along the full site frontage. Any unpaved areas on the nature strip must be turfed and landscaped to Council's specification.
69. Prior to issuing a final occupation certificate or occupation of the development (whichever is sooner), the owner/developer must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.
70. All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:
- a) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.
 - b) Works on Council land, must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.
 - c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.

71. The naturestrip upon Council's footway shall be excavated to a depth of 150mm, backfilled with topsoil equivalent with 'Organic Garden Mix' as supplied by Australian Native Landscapes, and re-turfed with Kikuyu Turf or similar. Such works shall be installed prior to the issue of a final Occupation Certificate.

Service Authorities

Sydney Water

72. A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains, and if required, will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC).

Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

The Section 73 Certificate must be submitted to the Principal Certifier and the Council **prior to the issuing of an Occupation Certificate.**

Undergrounding of Power

73. The Principal Certifier shall ensure that power supply to the completed development has been provided as an underground (UGOH) connection from the nearest mains distribution pole in Marine Parade. All work is to be to the requirements and satisfaction of Ausgrid and at no cost to Council.

NOTE : Any private poles must be removed prior to the issuing of an occupation certificate.

Stormwater Drainage

74. Should an OSD be provided a "restriction on the use of land" and "positive covenant" (under section 88E of the Conveyancing Act 1919) shall be placed on the title of the subject property to ensure that the onsite detention/infiltration system is maintained and that no works which could affect the design function of the detention/infiltration system are undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not be released, varied or modified without the consent of the Council.

Notes:

- a. The "restriction on the use of land" and "positive covenant" are to be to the satisfaction of Council. A copy of Council's standard wording/layout for the restriction and positive covenant may be obtained from Council's Development Engineer.
- b. The works as executed drainage plan and hydraulic certification must be submitted to Council prior to the "restriction on the use of land" and "positive covenant" being executed by Council.

- c. Evidence of registration of the Positive Covenant and Restriction (by receipt and/or title search) on the title of the subject property must be provided to the satisfaction of the Principal Certifier.

75. A works-as-executed drainage plan prepared by a registered surveyor and approved by a suitably qualified and experienced hydraulic consultant/engineer must be forwarded to the Principal Certifier and the Council. The works-as- executed plan must include the following details (as applicable):

- Finished site contours at 0.2 metre intervals;
- The location of any detention basins/tanks with finished surface/invert levels;
- Confirmation that orifice plate/s have been installed and orifice size/s (if applicable);
- Volume of storage available in any detention areas;
- The location, diameter, gradient and material (i.e. PVC, RC etc) of all stormwater pipes;
- Details of any infiltration/absorption systems; and
- Details of any pumping systems installed (including wet well volumes).

76. The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer, which confirms that the design and construction of the stormwater drainage system complies with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and conditions of this development consent.

The certification must be provided following inspection/s of the site stormwater drainage system by the Hydraulic Engineers to the satisfaction of the Principal Certifier.

77. The applicant shall submit to the Principal Certifier and Council certification from a suitably qualified and experienced professional engineer, confirming that any required sub-soil drainage systems have been provided in accordance with the conditions of this consent. There must be no dry weather seepage/groundwater flows discharging to Council's street gutter.

Landscaping

78. Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the amended Landscape Plans by Topos Landscape, sheets 1-4, rev B, dated 09/06/20, and stamped by Council 11/09/20, and any relevant conditions of consent.
79. Suitable strategies must also be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.

80. The nature-strip upon Council's footway shall be re-graded and re-turfed with Kikuyu Turf rolls, including turf underlay, wholly at the applicant's cost, to Council's satisfaction, prior to any Occupation Certificate.

Waste Management

81. Prior to the occupation of the development, the owner or applicant is required to contact Council's City Services department, to make the necessary arrangements for the provision of waste services for the premises.
82. The waste storage areas shall be clearly signposted.

OPERATIONAL CONDITIONS

The following operational conditions must be complied with at all times, throughout the use and operation of the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent and to maintain reasonable levels of public health and environmental amenity.

Use of parking spaces

83. The car spaces within the development are for the exclusive use of the occupants of the building. The car spaces must not be leased to any person/company that is not an occupant of the building.

Fire Safety Statements

84. A single and complete *Fire Safety Statement* (encompassing all of the fire safety measures upon the premises) must be provided to the Council (at least on an annual basis) in accordance with the requirements of the *Environmental Planning & Assessment Regulation 2000*.

The *Fire Safety Statement* is required to confirm that all the fire safety measures have been assessed by a competent fire safety practitioner and are operating in accordance with the standards of performance specified in the *Fire Safety Schedule*.

A copy of the *Fire Safety Statement* must be displayed in the building entrance/foyer at all times and a copy must also be forwarded to Fire & Rescue NSW.

Environmental Amenity

85. External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.

Stormwater Detention/Infiltration System

86. The detention area/infiltration system must be regularly cleaned and maintained to ensure it functions as required by the design.

Residential Parking Permits

87. All prospective owners and tenants of the building must be notified that Council will not issue any residential parking permits to occupants/tenants of this development.
88. A notice shall be placed in the foyer/common areas of the building advising tenants/occupiers that they are in a building which does not qualify for on-street resident parking permits.

GENERAL ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, or other relevant legislation and requirements. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

- A1 The requirements and provisions of the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000*, must be fully complied with at all times.

Failure to comply with these requirements is an offence, which renders the responsible person liable to a maximum penalty of \$1.1 million. Alternatively, Council may issue a penalty infringement notice (for up to \$6,000) for each offence. Council may also issue notices and orders to demolish unauthorised or non-complying building work, or to comply with the requirements of Council's development consent.

- A2 In accordance with the requirements of the *Environmental Planning & Assessment Act 1979*, building works, including associated demolition and excavation works (as applicable) must not be commenced until:
- A *Construction Certificate* has been obtained from an Accredited Certifier or Council,
 - An Accredited Certifier or Council has been appointed as the *Principal Certifier* for the development,
 - Council and the Principal Certifier have been given at least 2 days notice (in writing) prior to commencing any works.
- A3 Council can issue your *Construction Certificate* and be your *Principal Certifier* for the development, to undertake inspections and ensure compliance with the development consent and relevant building regulations. For further details contact Council on 9093 6944.
- A4 This determination does not include an assessment of the proposed works under the Building Code of Australia (BCA), Disability (Access to Premises – Buildings) Standards 2010 and other relevant Standards. All new building work (including

alterations and additions) must comply with the BCA and relevant Standards. You are advised to liaise with your architect, engineer and building consultant prior to lodgement of your construction certificate.

- A5 Any proposed amendments to the design and construction of the building may require a new development application or a section 4.55 amendment to the existing consent to be obtained from Council, before carrying out such works
- A6 A Local Approval application must be submitted to and be approved by Council prior to commencing any of the following activities on a footpath, road, nature strip or in any public place:-
- Install or erect any site fencing, hoardings or site structures
 - Operate a crane or hoist goods or materials over a footpath or road
 - Placement of a waste skip or any other container or article.

For further information please contact Council on 9093 6971.

- A7 Specific details of the location of the building/s should be provided in the Construction Certificate to demonstrate that the proposed building work will not encroach onto the adjoining properties, Council's road reserve or any public place.
- A8 This consent does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is proposed to be carried out upon any adjoining or supported land, the land owner or principal contractor must obtain:
- the consent of the owners of such adjoining or supported land to trespass or encroach, or
 - an access order under the *Access to Neighbouring Land Act 2000*, or
 - an easement under section 88K of the *Conveyancing Act 1919*, or
 - an easement under section 40 of the *Land & Environment Court Act 1979*, as appropriate.

Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

- A9 External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to any adjoining land.

Finished ground levels external to the building are to be consistent with the development consent and are not to be raised, other than for the provision of approved paving or the like on the ground.

- A10 Prior to commencing any works, the owner/builder should contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au and relevant Service Authorities, for information on potential underground pipes and cables within the vicinity of the development site.

- A11 An application must be submitted to an approved by Council prior to the installation and operation of any proposed greywater or wastewater treatment systems, in accordance with the *Local Government Act 1993*.

Greywater/Wastewater treatment systems must comply with the relevant requirements and guidelines produced by NSW Health, NSW Office of Environment and Heritage and other relevant regulatory requirements.

- A12 Underground assets may exist in the area that is subject to your application. In the interests of health and 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 owners 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.

- A13 The applicant is to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.