



Land and Environment Court New South Wales

Case Name: **Hyside Projects Subthree Pty Ltd v City of Canada Bay Council No 2**

Medium Neutral Citation: [2022] NSWLEC 1122

Hearing Date(s): 9, 10 and 30 September 2021

Date of Orders: 09 March 2022

Date of Decision: 09 March 2022

Jurisdiction: Class 1

Before: Espinosa C

Decision: The Court orders that:
(1) The Appeal is upheld.
(2) The applicant's written request pursuant to cl 4.6 of the Canada Bay Local Environmental Plan 2013 seeking to justify the contravention of the development standard in cl 4.3 of the Canada Bay Local Environmental Plan 2013 is upheld.
(3) Development Application No 2020/0247 seeking consent for the erection of a residential flat building containing 99 apartments, site preparation including demolition, excavation, landscaping and other related works at 10 Chapman Street Strathfield, legally described as Lot 62 in DP 1266884 is approved subject to the conditions set out in Annexure "A" to this agreement.
(4) Exhibits 4, 5, 12 and 13 to be returned.

Catchwords: DEVELOPMENT APPEAL – residential flat building – contravention of maximum building height development standard – bulk and scale – flood planning - apartment design principles – view loss – bicycle parking – waste management - orders

Legislation Cited: Environmental Planning and Assessment Act 1979, s 8.7
Canada Bay Local Environmental Plan 2013, cl 4.3, 4.6

JUDGMENT

- 1 **COMMISSIONER:** This is class 1 Development Appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) being an appeal against the deemed refusal of Development Application No 2020/0247 seeking consent for the erection of a residential flat building containing 99 apartments, site preparation including demolition, excavation, landscaping and other related works (the Proposed Development) at 10 Chapman Street Strathfield, legally described as Lot 62 in DP 1266884 (formerly known and referred to as 10-12 Chapman Street Strathfield, legally described as Lot A in DP 378136 and Lot 52 in DP 1252433) (the Site)
- 2 On 11 February 2022, I handed down my reasons for judgment in the Class 1 appeal (*Hyside Projects Subthree Pty Ltd v City of Canada Bay Council* [2022] NSWLEC 1062) to uphold the appeal subject to conditions.
- 3 I directed the Council to prepare and file conditions of consent in the requisite template and to provide them to the Court.
- 4 The Council filed the conditions in accordance with my direction on 2 March 2022 and the parties drew to my attention the additional condition of consent at 'Condition 3 DAGCA08 – Sydney Trains Requirements' explaining that this additional condition has been included at the request of Sydney Trains.
- 5 On 22 February 2022, after having read the judgment, Sydney Trains advised the parties if the words "the relevant" ahead of all references to a "Construction Certificate" are inserted in accordance with [104] of judgment, '*Sydney Trains will require involvement to ensure that appropriate conditions are applied to and complied with by the Applicant for all stages of development that are considered relevant by Sydney Trains.*'
- 6 While this condition is in addition to the conclusions of the judgment at [102]-[130], the parties have both agreed to its insertion and for the reason at par 5 in this judgment, the Court will grant consent in accordance with the conditions of consent filed on 2 March 2022.

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA 2020/0247

Development: Erection of a residential flat building containing 99 apartments, site preparation including demolition, excavation, landscaping and other related works.

Site: 10 Chapman Street, Strathfield, NSW

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

Date of determination: 9 March 2022

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 10 Chapman Street, Strathfield, NSW.

The conditions of consent are as follows:

3. Cross sectional drawings showing the rail corridor, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the rail corridor. All measurements are to be verified by a Registered Surveyor.
4. Detailed Survey Plan showing the relationship of the proposed development with respect to Sydney Trains' rail corridor land.
5. If required by Sydney Trains, an FE analysis which assesses the different stages of loading-unloading of the site and its effect on the rock mass surrounding the rail corridor.
6. If required by Sydney Trains, a Monitoring Plan.

Any conditions issued as part of Sydney Trains' endorsement of the above documents will also form part of the consent conditions that the Applicant is required to comply with.

b. Service truck parking area

The Applicant must provide an updated Ground Floor Plan, Basement 1 Plan and Ground Landscape Plan. They shall demonstrate the provision of an off-street service truck parking area in place of unit G-02 and part of G-01, along with reconfiguration of Basement 1 to provide a bin hoist. These plans shall be generally in accordance with preliminary plans as referenced in Annexure B to the Supplementary Experts' Joint Report - Traffic, Waste and Stormwater filed with the Land and Environmental Court of New South Wales on 24 September 2021.

c. Acoustic Assessment

The Acoustic DA Assessment is to be revised and updated to account for the changed waste collection arrangements and proximity of waste collection to a habitable room. This Acoustic DA Assessment must demonstrate that the required noise and vibration criteria can be achieved, and set out the materials and forms of construction to achieve these criteria

DA1101	L1	Integrated Design Group	Issue I 25.07.2021
DA1102	L2-L4 floor plan	Integrated Design Group	Issue I 25.07.2021
DA1103	L5-L6 floor plan	Integrated Design Group	Issue A 25.07.2021
DA1104	L7-L8 floor plan	Integrated Design Group	Issue I 25.07.2021
DA1105	L9 floor plan	Integrated Design Group	Issue I 25.07.2021
DA1106	L10 floor plan	Integrated Design Group	Issue H 25.07.2021
DA1106	L10 roof plan	Integrated Design Group	Issue D 01.09.2020
DA1107	L11-L14 floor plan	Integrated Design Group	Issue A 25.07.2021
DA2000	North Elevation	Integrated Design Group	Issue G 25.07.2021
DA2001	South-West Elevation	Integrated Design Group	Issue G 25.07.2021
DA2002	East Elevation	Integrated Design Group	Issue G 25.07.2021
DA3000	Section a-a	Integrated Design Group	Issue F 10.06.2021
DA3001	Section b-b	Integrated Design Group	Issue C 10.06.2021
DA3002	Driveway sections	Integrated Design Group	Issue B 10.06.2021
DA9400	External Finish Schedule	Integrated Design Group	Issue A 01.09.2020
DA9401	External Finish Schedule	Integrated Design Group	Issue A 01.09.2020

2. DAGCA03 - Construction within Boundary

All approved construction including but not limited to footings, walls, roof barges and guttering are to be constructed wholly within the boundaries of the premises.

(Reason: To ensure compliance with approved plans)

3. DAGCA08 - Sydney Trains Requirements

- If required by Sydney Trains, prior to the commencement of works or at any time during the excavation and construction period deemed necessary by Sydney Trains, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required within 10 days following the undertaking of the inspection, unless otherwise notified by Sydney Trains.
- If required by Sydney Trains, prior to the issue of the Occupation Certificate, or at any time during the excavation and construction period deemed necessary by Sydney Trains, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The Principal Certifying Authority is not to issue the final Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- The Applicant shall prepare an acoustic assessment demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines". The Applicant must incorporate in the development all the measures recommended in the report. A copy of the report is to be provided to the Principal Certifying Authority and Council prior to the issuing of the relevant Construction Certificate. The Principal Certifying Authority must ensure that the recommendations of the acoustic assessment are incorporated in the construction drawings and documentation prior to the issuing of the relevant Construction Certificate.

the relevant Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.

- The Applicant must ensure that all drainage from the development is adequately disposed of and managed and not allowed to be discharged into the railway corridor unless prior written approval has been obtained from Sydney Trains.
- During all stages of the development the Applicant must take extreme care to prevent any form of pollution entering the railway corridor. Any form of pollution that arises as a consequence of the development activities shall remain the full responsibility of the Applicant.
- Excess soil is not allowed to enter, be spread or stockpiled within the rail corridor (and its easements) and must be adequately managed/disposed of.
- The design, installation and use of lights, signs and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor must limit glare and reflectivity to the satisfaction of the rail operator. The Principal Certifying Authority is not to issue the relevant Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- Prior to the issuing of the relevant Construction Certificate, the following rail specific items are to be submitted to Sydney Trains for review and endorsement:
 - Machinery to be used during excavation/construction.

The Principal Certifying Authority is not to issue the relevant Construction Certificate until it has received written confirmation from Sydney Trains that this condition has been complied with.

- The Developer shall not at any stage block the corridor access gate/s and should make provision for easy and ongoing 24/7 access by rail vehicles, plant and equipment to support maintenance and emergency activities.

- is available (or has a delegate notified in writing to Sydney Trains that is available) on a 7 day a week basis to liaise with the representative of Sydney Trains, as notified to the Applicant.
- Without in any way limiting the operation of any other condition of this consent, the Applicant must, during demolition, excavation and construction works, consult in good faith with Sydney Trains in relation to the carrying out of the development works and must respond or provide documentation as soon as practicable to any queries raised by Sydney Trains in relation to the works.
- Where a condition of consent requires consultation with Sydney Trains, the Applicant shall forward all requests and/or documentation to the relevant Sydney Trains external party interface team. In this instance the relevant interface team is Central Interface and they can be contacted via email on Central.Interface@transport.nsw.gov.au.
- If the Applicant intends to seek multiple staged Construction Certificates for the development then, prior to the issue of the first Construction Certificate for any part of the development, the Applicant must advise Sydney Trains of the intended staging of Construction Certificates. Sydney Trains will then advise the Applicant which conditions of this consent required by Sydney Trains which are stated as applying "prior to the issue of the relevant Construction Certificate" will be relevant for each Construction Certificate stage of the development.

4. DAGCB01 - Australia Post Guidelines

Mail deliveries are to be in accordance with Australia Post Guidelines, as set out in the Australia Post publication "General Post Guide - September 2007". A copy of this Guide can be obtained from Australia Post's web page at www.auspost.com.au. A copy of the brochure may be obtained from Australia Post. In general, a clearly marked mailbox (or group of mailboxes) shall be provided within 500mm of the footpath alignment.

(Reason: To ensure compliance with mail delivery regulations)

5. DAGCB02 - Compliance with Disability Discrimination Act

This approval does not necessarily protect or guarantee against a possible claim of discrimination (intentional or unintentional) under the *Disability*

(Reason: Tree preservation)

8. DAGCC05 - Waste Management

Requirements of the approved Waste Management Plan shall be complied with during site preparation, throughout demolition and construction and ongoing use of the site. Waste management and its storage must not pose a threat to public health or the environment.

(Reason: Compliance with approval)

9. DAGCD01 - Approved Stormwater Drainage Design

The stormwater drainage system for the proposed development shall be constructed in accordance with the following approved plans and documentation, endorsed with Council's Stamp, and Council's "Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan", except where amended by other conditions of consent:

Drawing No.	Title	Prepared by:	Revision No. Dated:
Project no. 20200251; (SW100, SW200, SW201, SW2020,SW203, SW204, SW300, SW301, SW400, SW500)	Stormwater Management	SGC Consulting Engineers	Issue D 05 July 2021

Important Note:

- The approved Stormwater Drainage Plan as identified above is for Concept Only. The designer is responsible for providing sufficient information and/or updates to the Stormwater Drainage Plan suitable for Construction Certificate approval.
- Should any changes be required to the approved stormwater drainage plan as referred to above, the amended design shall achieve equivalent performance standards in accordance with Council's "Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan".

- b. Demolition of buildings and structures must comply with all current and relevant Australian Standards.
- c. Demolition works are restricted as follows:
 - Monday to Saturday inclusive - 7:00am - 5:00pm
 - Sundays and Public Holidays - No work
- d. At least two (2) working days (i.e. Monday to Friday exclusive of public holidays), the developer or demolition contractor must notify adjoining residents prior to demolition commencing advising the following:
 - The date when demolition will commence;
 - Details of the name, address and business hours contact telephone number of the demolisher, contractor or developer;
 - The telephone number of WorkCover's Hotline 13 10 50.

Demolition Involving the Removal of Asbestos

General Information

Homes built or renovated prior to 1987 are likely to contain asbestos. Asbestos is most commonly found within eaves, internal and external wall cladding, ceilings and walls (particularly within wet areas such as bathrooms and laundries), and fences. Unless properly handled, asbestos disturbed or removed during renovations can cause the development of asbestos related diseases, such as asbestosis, lung cancer and mesothelioma.

To ensure work does not cause undue risk please see the following site for further information: www.asbestosawareness.com.au

Asbestos to be removed by licensed asbestos removalist

All works removing asbestos containing materials must be carried out by a suitably licensed asbestos removalist duly licensed with Workcover NSW, holding either a Friable (Class A) or a Non- Friable (Class B) Asbestos Removal License which ever applies AND a current WorkCover Demolition License where works involve demolition.

Warning signs must be placed so they inform all people nearby that asbestos removal work is taking place in the area. Signs should be placed at all of the main entry points to the asbestos removal work area where asbestos is present. These signs should be weatherproof, constructed of light-weight material and adequately secured so they remain in prominent locations. The signs should be in accordance with AS 1319-1994 Safety signs for the occupational environment for size, illumination, location and maintenance.

Barricades

Appropriate barricades must be installed as appropriate to prevent public access and prevent the escape of asbestos fibres. Barricades must be installed prior to the commencement of asbestos removal works and remain in place until works are completed.

(Reason: To ensure compliance with the relevant legislation and to ensure public and work safety)

12. DAPDB03 - Site Safety Fencing - Demolition only

Erect site fencing to a minimum height of 1.8m complying with WorkCover Guidelines, to exclude public access to the site throughout the demolition. The fencing **must be erected before the commencement of any demolition work** and maintained.

The site shall be maintained in a clean and orderly condition during demolition works.

Hoardings

If applicable, a separate Hoarding Application for the erection of an A class (fence type) or B class (overhead type) hoarding along the street frontage(s) complying with WorkCover requirements must be obtained including:

- payment to Council of a footpath occupancy fee based on the area of footpath to be occupied and Council's Schedule of Fees and Charges before the commencement of work; and
- provision of a Public Risk Insurance Policy with a minimum cover of \$10 million in relation to the occupation of and works within Council's road reserve,

2010 - As of 1 May 2011, if access is provided to the extent covered by this Standard, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992.

(Reason: To inform of relevant access requirements for persons with a disability)

16. DACCA03 - Driveway Design and Certification

The driveway design shall be amended in accordance with Council's "Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan", AS2890.2:2018 and AS/NZS2890.1:2004 "Off Street Car Parking" to the follow:

- a) A longitudinal section through the proposed driveway shall be provided and shall start from the centre line of the road to the basement 1 shall be prepared demonstrating compliance with the scraping provisions for the B99 vehicle as stipulated in AS/NZS2890.1:2004 "Off Street Car Parking" Code. The longitudinal section shall include:
 - i. All changes in levels and gradients e.g. lip of gutter, gutter invert, kerb layback, edge of footpath and at the property boundary.
 - ii. Footpath shall have a maximum crossfall of 2.5% graded but no less than 0.5% graded towards the street.
 - iii. A standard layback having a 90mm height over 450mm distance from the invert of gutter is to be incorporated into the driveway long section.
 - iv. The driveway to the basement carpark shall have a crest to prevent the runoff from the street entering the property in case of street flooding up to RL12.0m AHD and a flood gate included on the crest to achieve the PMF flood level of RL12.5m AHD
 - v. Driveway longitudinal section shall be checked using the 99th percentile of vehicle template to demonstrate the compliance with scraping provision. Please note that the design B99 vehicle shall have the ground clearance of 120mm (fully loaded vehicle).
- b) The vehicular crossing from the boundary line to back of layback shall be perpendicular in accordance with Council's DCP, Engineering Specification.
- c) A notice shall be indicated on the plan states "All redundant driveway shall be removed and the layback is to be replaced with upright kerb & gutter. Any redundant stormwater outlets shall also be removed".

valuer to determine the value of the land to be dedicated to the Council. In the event that the Applicant and the Council are unable to agree on the appointment of an independent valuer, the valuer shall be appointed by the Chairman of the Australian Institute of Valuers or failing appointment by him/her the valuer shall be appointed by the President of the Law Society of New South Wales.

5. The Applicant and the Council will use their best endeavours to ensure that the appointment of the valuer and the determination by the valuer of the value of the land to be dedicated proceeds as expeditiously as is practically possible.
6. If an agreement as to the amount of the value of the land to be dedicated is not reached within 90 days of the independent valuers determination, the obligation to dedicate the land required for dedication does not arise.
7. If both parties are satisfied with the value determined, and subsequently an agreement is reached:
 - within 90 days the Applicant and landowner will provide to the Council all documents reasonably necessary to dedicate the land to the Council at a settlement in which the Council will pay such amount determined to be the difference payable pursuant to (2) above; and
 - will allow such offset against the s 7.11 contributions as equates to the independently determined value of the land to be dedicated.
8. The applicant shall be responsible for the payment of all costs associated with the registration of the land to be dedicated.

(Reason: To confirm and clarify the terms of the approval)

18. DACCB02 - Damage Deposit for Council Infrastructure

You must complete a Deposit/Bond Application Form located on Council's website under Forms and Fact Sheets > Rates and Finance.

A Damage Deposit (calculated in accordance with Council's adopted Fees and Charges) of **\$50000.00** shall be paid to Council **prior to the issue of the relevant Construction Certificate**.

Based on the following number of Dwellings and Bedrooms:

No. of Dwellings	Per Resident	Studio/One bedroom dwelling	Two bedroom dwelling	Three + bedroom dwelling
	-	32	47	20
Total per number of bedrooms	-	\$356,329.28	\$770,838.07	\$400,000.00
Combined TOTAL	\$ 1,527,167.35			

Any change in the Consumer Price Index between June 2021 (CPI 119.4) and the date that the Section 7.11 Development Contribution is paid, will be added/subtracted from the amount cited above.

Please present a copy of this condition when paying the contribution at the Customer Service Centre so that it can be recalculated.

A copy of the Strathfield Triangle Development Contributions Plan may be obtained from Council's website.

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new developments)

21. DACCE01 - Amendments to Approved Plans

The following amendments shall be made to the approved plans prior to the issue of the relevant Construction Certificate:-

- The vertical blades to the balcony to Unit 07 on Level 1, Unit 08 on Levels 2-4 and Unit 07 on Levels 5-8 shall be angled in a fixed position to prevent overlooking of the balcony to Unit 08 on Level 1, Unit 09 on Levels 2-6, and unit 08 on Levels 7-8
- A blade wall should be provided to the southern end of the balcony to Unit 08 on Level 1, Unit 09 on Levels 2-6, and unit 08 on Levels 7-8 to ensure adequate acoustic privacy between balconies. The blade wall should run from the balcony floor to ceiling level and extend to the appropriate mid-point of the corner

23. DACCE02A - Construction Traffic Management Plan (CTMP)

Prior to the issue of the relevant Construction Certificate, the applicant shall submit and have approved by Council's Engineers, a detailed Construction Traffic Management Plan (CTMP). The plan shall demonstrate how construction and delivery vehicles will access the development site during the demolition, excavation and construction phase of the development. The plan shall be certified by a suitably qualified and experienced traffic consultant and all traffic associated with the subject development shall comply with the terms of the approved Construction Traffic Management Plan.

The following matters (at a minimum) must be addressed in the CTMP:

- (a) A detailed description and route map of the proposed truck/construction vehicle access routes.
- (b) The locations of any proposed Construction Works Zones along the site frontage.
- (c) Provide a construction schedule.
- (d) Tradesperson parking (parking shall be provided on-site where possible).
- (e) Provide relevant Traffic Control Plans (must be certified by a suitably qualified RMS ticket holder).
- (f) Provide relevant Pedestrian Management Plans.
- (g) A site plan which indicates site entrances and exits, turning areas within the site for construction and spoil removal vehicles allowing a forward ingress and egress for all construction vehicles on the site (superimposed truck swept path diagrams). Site entrances and exits shall be controlled by a certified traffic controller.

(Reason: Traffic safety and amenity during construction phase)

24. DACCE04 - Obtaining the relevant Construction Certificate for Building Work

This Development Consent does not constitute approval to carry out construction work. Construction work may only commence **upon the issue of the relevant Construction Certificate, appointment of a Principal Certifying Authority (PCA), and lodgement of Notice of Commencement.**

spaces. Access to visitor parking spaces shall not be restricted without development approval and a sign shall be erected at the vehicular entrance indicating the availability of visitor parking.

The above details shall be submitted to and approved by the Accredited Certifier **prior to the issue of the relevant Construction Certificate.**

(Reason: Parking and access)

27. DACCG10 - Speed Hump and Stop Sign on Exit

The applicant shall install a stop sign and a speed hump at the exit from the site. The stop sign must be accompanied by the associated line marking and the speed hump shall be set back by 1.5 metres from the boundary alignment. The devices shall be designed and constructed in accordance with the provision of all relevant Australian Standards. The building plans shall indicate compliance with this requirement **prior to the issue of the relevant construction certificate.**

(Reason: Traffic safety and management)

28. DACCG15 - Vehicle Access

- A kerb shall be provided a minimum 0.5m from high vertical obstructions along the outside edge of curved circulation ramps as per Figure 2.9 of AS/NZS2890.1:2004. Plans demonstrating compliance with this requirement shall be submitted to the Accredited Certifier prior to the issue of the relevant Construction Certificate.
- AS/NZS2890.1:2004 requires walls to be splayed a minimum 2.5m by 2.0m adjacent the driveway at the property boundary for pedestrian safety. Any objects within the splay shall have a maximum height of 600mm above the internal driveway level. This includes the mature height of landscaping within the splay. Architectural and landscaping plans demonstrating compliance with this requirement shall be submitted to the Accredited Certifier prior to the issue of the relevant Construction Certificate.
- Bollards shall be installed in the shared areas adjoining disabled parking spaces as per AS/NZS 2890.6:2009. Plans demonstrating compliance with this requirement shall be submitted to the Accredited Certifier prior to the issue of the relevant Construction Certificate.

When lodging the Damage Report Form, fees are payable in accordance with Council's fees and charges schedule, which will go towards administration and inspection costs.

The cost of repairing any damage to Council property (including the footpath, verge, street trees, kerb, gutter, road pavement or the like) during and/or immediately after construction must be paid to Council or shall be deducted from the damage deposit bond. Repair of damaged Council property by the Applicant or his agent is not permitted unless approved by Council.

For roadways requiring asphaltic concrete works or adjustment works, these shall be done to a minimum width as specified by Council. Minimum dimensions are given in Council's Specification for Driveway Construction or Specification for Restoration Works.

(Reason: Maintain public assets)

31. DACCI02 - Footpath Design Levels

The internal driveway levels shall be designed to align with existing/future levels in the road reserve which is taken to include the 3m road widening), as per Council's Public Domain Plan and Council's Engineering Specifications. In particular in relation to levels at the driveway and at pedestrian entrances.

Plans demonstrating compliance with this requirement shall be approved by Council **prior to the issue of the relevant Construction Certificate**.

(Reason: Public Infrastructure)

32. DACCI03 - Protection of Public Places

The adjoining or adjacent public area is not to be obstructed by any materials, vehicles, refuse skips and the like, under any circumstances unless approved in writing by Council.

If the work involved in the demolition or construction of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or

- iii. Longitudinal section of any proposed stormwater pipe line(s) from the development to the existing Council's underground drainage system in Cooper Street with all utility services, depth and location shall be shown on the drawing. All proposed stormwater line(s) within road reserve shall be designed and constructed in accordance with Council's DCP, Appendix 2 – Engineering Specification.
- iv. Any landscaping, existing trees and trees planting within footpath area shall be indicated on the plan.
- v. All services near the work area (e.g., pits (Telecom, stormwater), lighting, poles, sewer etc) shall be shown on the drawings. Written approval from the relevant public utility services authority is required to submit to Council if relocation and/or adjustment of the public utility services affected by the proposed works. Any alteration works for the public utility services shall address the relevant public authority requirement.

The drawings shall include plan view, long/cross sections with existing and finished surface levels, existing and proposed signage (if any) and other relevant details for the new works. The drawing shall also demonstrate how the proposed civil works is to be smooth connected with the remaining street scape or any existing vehicular crossing of adjoining property/s.

The engineering drawings shall be prepared by a Chartered Civil Engineer with NER Accreditation and to be submitted to, and approved by Council in writing and all fees and charges paid **prior to issue of the relevant construction certificate.**

Notes:

- a. Prepared and submitted on A1, or A3 size sheets, undertaken by a consulting Civil Engineer,
- b. All engineering works shall be designed and undertaken in accordance with the Council's "Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan" and Council's Development Control Plan, and
- c. Approval in writing by Council under Section 138 of the Roads Act., prior to the issue of the relevant Construction Certificate, and
- d. All public stormwater drainage works adjacent Cooper Street, Strathfield is to be fully supervised by Council. A maintenance period of six (6) months or as specified by Council shall apply to the work after it has been completed and approved. In that period the Applicant shall be liable for any part of the work which fails to perform in the manner outlined in Council's specifications, or as would reasonably be expected under the design conditions, and

and reinstated with concrete kerb and gutter or to the existing edging profile as specified by Council and the footpath area is to be restored to the satisfaction of Council's Utilities & Development Engineer, **prior to the issue of the Occupation Certificate.**

(Reason: Public infrastructure maintenance)

36. DACCJ03 - Separate Approval for Works in the Public Road (External Works) - Section 138 Roads Act

Pursuant to Section 138 of the Roads Act 1993 and **prior to the issue of the relevant Construction Certificate**, the applicant must submit detailed plans to and obtain a written approval from the Appropriate Road Authority (usually Council for Local and Regional Roads and bot Council and Roads & Maritime Services (RMS) for Arterial Roads), for any works in the road reserve.

Additionally, where the work involves closure of a carriageway on a State Road, Regional Road, or it is such that it may impact the traffic flow on a State Road or Regional Road, or is within close proximity of a Traffic Facility (eg Traffic Lights) then a Road Occupancy License (ROL) must be obtained from the Planned Incidents Unit of the Traffic Management Centre of the RMS. The application should be lodged at least 10 days prior to the planned commencement date.

(Reason: Protection of Public Assets and information)

37. DACCK02 - BASIX Commitments

The approved BASIX Certificate shall be submitted to the Accredited Certifier with the application for the relevant Construction Certificate.

Where a change or changes are proposed in the BASIX commitments, the applicant must submit a new BASIX Certificate to the Accredited Certifier and Council. If any proposed change in the BASIX commitments is inconsistent with the development consent the applicant will be required to submit a modification to the development consent to Council under Section 4.55 of the Environmental Planning and Assessment Act 1979.

Important Note: Construction Certificate Approval does not include approval for works external to the property. Where the proposed design extends beyond the property boundary, separate approval under Section 138 of the Roads Act 1993, must be obtained from Council prior to the commencement of works.

The applicant is advised to contact Council for clarification of proposed works for which approval under Section 138 applies.

(Reason: Stormwater management)

39. DACCL02 - Certification of the Stormwater Drainage System Design

Certification of the proposed stormwater design shall be obtained from a Professional Civil Engineer whose qualifications are recognised by, and who is a current member of, Engineers Australia and shall certify that the proposed stormwater drainage system has been designed in accordance with Council's "Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan". The certified design shall be submitted to the Principal Certifying Authority **prior to the issue of the relevant Construction Certificate.**

(Reason: Adequate stormwater management)

40. DACCL04 - Erosion and sedimentation controls

Erosion and sedimentation controls must be provided to ensure:

- (a) Compliance with the approved Soil and Water Management Plan
- (b) Removal or disturbance of vegetation and top soil is confined to within 3m of the approved building area (no trees to be removed without approval)
- (c) All uncontaminated run-off is diverted around cleared or disturbed areas
- (d) Silt fences or other devices are installed to prevent sediment and other debris escaping from the cleared or disturbed areas into drainage systems or waterways
- (e) All erosion and sediment controls are fully maintained for the duration of demolition/ development works

Development Control Plan”, whichever is applicable. A detailed stormwater plan showing the proposed re-use system shall be submitted and approved by Council or an Accredited Certifier **prior to the issue of the relevant Construction Certificate.**

(Reason: Compliance and Amenity)

43. DACCL07 - Silt Arrestors and Gross Pollutant Traps

Silt and gross pollutant traps shall be fitted in all necessary stormwater pits, as designed by a Professional Civil Engineer whose qualifications are recognised by, and who is a current member of, Engineers Australia, in accordance with Council’s “Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan” and to the satisfaction of Council or an Accredited Certifier. Details are to be submitted with the design **prior to the issue of the relevant Construction Certificate.**

(Reason: Environmental Protection)

44. DACCM01 - Dilapidation Report

A Dilapidation Report is to be undertaken on all properties, which in the opinion of a suitably qualified engineer, could be potentially affected by the construction of the project. The Dilapidation Report shall be carried out **prior to the issue of the relevant Construction Certificate.**

Where the Principal Certifier is satisfied that the occupier of a property has declined to provide reasonable access on request the Dilapidation Report only need address that property to the extent it is practicable to do so without such access.

The Dilapidation Report is to be prepared by a suitably Qualified Chartered Professional Civil or Structural Engineer with current Institution of Engineers, Australia Corporate Membership and registered on the National Engineers Register (NER) or Geotechnical Practitioner.

The Report shall cover structural and geotechnical factors likely to arise from

surrounding properties comparing to the existing scenario. The assessment shall include the overall upstream catchment analysis, downstream boundary condition. All obstructions, including proposed buildings/structures and retaining walls shall also be considered in the hydraulic modelling. The results such as water depth, levels, velocities and hazard shall be shown on plans with 1% Annual Exceedance Probability (AEP) and the Probable Maximum Flood (PMF) stormwater event inundation areas. The flood model shall complement the flood study report prepared by SGC Rev. A dated 2 July 2021. The report will include the hydrological and hydraulic details requested above.

Note: The electronic modelling (e.g., DRAINS, TUFLOW, Airborne Laser Scanning (ALS) grid, pre and post-development flood result in ESRI grid (.asc) format etc.) utilised in the report and plans shall be submitted to Council.

- b) Design and construction of the proposed flood mitigation measures including flood gate and door shall be able to withstand the forces of floodwater, debris and buoyancy up to and including the Probable Maximum Flood (PMF) level of RL12.50m AHD.
- c) The minimum non-habitable floor level for the development shall be at 1%AEP water surface level, plus 0.3 metres freeboard. This excludes the service truck parking area which may have a floor level of RL11.7m AHD, which is to have a flood gate at the entrance to the parking area providing protection to a minimum RL12.50m AHD.
- d) All new works shall be constructed in flood compatible materials to the Probable Maximum Flood (PMF) level of RL12.50m AHD, including the requirement for electrical equipment, power supply, wiring etc. All works shall comply in accordance with Clause 7.5, Part C - General Control of Council's DCP 2017.
- e) Addressing car parking protection to the Probable Maximum Flood (PMF) of RL12.50m AHD in accordance with Clause 7.5, Part C - General Control of Council's DCP 2017.

(Reason: To prevent localised flooding and safety)

47. DACCM11 - Water Sensitive Urban Design (WSUD)

The development has been identified as requiring water sensitive urban design (WSUD) which has formed part of the development consent.

Therefore, in order to satisfy the drainage requirements for the building, any construction certificate for the building shall include the construction of the WSUD system. The design and construction details of WSUD system and specification shall achieve the pollution reduction target in accordance with the Council's "Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan" shall be submitted to the certifying authority prior to issue of Construction Certificate.

Note: If the principal certifying authority is the Council, the nomination will be subject to the payment of a fee for the service to cover the cost of undertaking all necessary inspections and the issue of the appropriate certificates.

Under the Environment Planning and Assessment (Quality of Construction) Act, 2003, a sign must be erected in a prominent position on the work site showing the name, address and telephone number of the principal certifying authority; the name of the principal contractor (if any) for the building work and a telephone number at which that person may be contacted outside working hours. That sign must also state that unauthorised entry is prohibited. The sign must not be removed until all work has been completed.

(Reason: Statutory requirements)

49. DAPCB02 - Construction Certificate

No work shall commence until you:

- (a) Obtain the relevant Construction Certificate from either the City of Canada Bay Council or an Accredited Certifier - a fee applies for this service; and
- (b) Lodge with the City of Canada Bay Council any Construction Certificate obtained from an Accredited Certifier (together with associated plans and documents) - a fee applies for this service

(Reason: Statutory Requirement)

50. DAPCB05 - Notice of commencement

No work shall commence until you submit a notice of commencement (form will be attached with issue of the relevant Construction Certificate or available from our website) giving Council:

- (a) Not less than two (2) days' notice of the date on which it is proposed to commence work associated with this Development Consent;

- The Principal Contractor by showing the Principal Contractor's name, address and telephone number (outside of work hours) for that person.
- The sign must state that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the work is being carried out, but must be removed when the work has been completed.

This clause does not apply to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

(Reason: Statutory Requirement)

53. DAPCB09 - Toilet Amenities on Construction Site

Prior to commencement of any building works, toilet facilities for employees must be provided in accordance with WorkCover NSW requirements.

Where female workers are present on site, appropriate measures for sanitary item disposal should be made, such as a disposal unit provided in the portable toilet or sewer connected toilet closet.

(Reason: Statutory Requirement - Health and amenity)

54. DAPCB10 - Notice of Requirements from Sydney Water

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through Sydney Water or an authorised Water Servicing Coordinator (WSC). An assessment will be made to determine the availability of water and sewer services, which may require extension, adjustment or connection to Sydney Water mains. Please refer to Sydney Water's website at [www.sydneywater.com.au/section 73](http://www.sydneywater.com.au/section_73) or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

Following application, Sydney Water will assess the development and if

plan shall be kept on-site and made available to Council's Officers on request. All erosion and sediment control measures must be maintained in a functional condition throughout the duration of the works.

(Reason: Environmental protection)

Conditions which must be satisfied during any development work

57. DAPCC03 - Alterations / Removal of Services

The applicant to arrange with the relevant public utility authority for the alteration or removal of any affected services in connection with the development. Any such work being carried out at the applicant's cost.

(Reason: Asset Protection)

58. DADWA01 - Burning and Burying of Waste

No materials or rubbish resulting from the land clearing, demolition and building works must be burnt or buried on the site.

(Reason: Health and amenity)

59. DADWA02 - Construction Hours

No construction or any other work related activities shall be carried out on the site outside the hours of 7.00 am to 5.00 pm Mondays to Saturdays. No work to occur on Sundays and public holidays.

Where the development involves the use of jackhammers/ rock breakers and the like or other heavy machinery, such equipment may only be used between the hours of 7.00 am - 5.00 pm Monday to Friday only.

(Reason: Safety and amenity)

- (f) All stockpiles of contaminated soil shall be stored in a secure area and be covered if remaining more than 24 hours or as directed by the City of Canada Bay Council.

(Reason: Environmental amenity)

62. DADWA06 - Prevention of Nuisance

All possible and practical steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from windblown dust, debris, noise and the like during the demolition, excavation and building works.

(Reason: Health and amenity)

63. DADWB03 - Construction Management Plan

All development activities and traffic movements must be carried out in accordance with the approved Construction Management Plan.

All controls in the Plan must be maintained at all times. A copy of the Plan must be kept on site at all times and made available to the Accredited Certifier and Council on request.

(Reason: Compliance with condition of consent)

64. DADWB04 - Damage to Adjoining Properties

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

(Reason: Structural safety)

- (j) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- (k) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- (l) Details as to the method and location of disposal of demolition materials (weight dockets, receipts etc.) should be kept on site as evidence of approved methods of disposal and recycling.
- (m) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- (n) Public footways and roadways adjacent to the site must be fully maintained and cleared of obstructions during construction unless prior separate approval from Council is obtained including payment of relevant fees.
- (o) Building operations such as brick cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- (p) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.

(Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.)

67. DADWD01 - Road Opening Permit

Pursuant to Section 138 of the Roads Act, should any work on the verge, footpath, public road reserve or public reserve (open space) be required, approval will need to be obtained from Council. In this regard the Applicant is to contact Council's Customer Services Centre to apply for a Road Opening Permit, for works in relation to the excavation of the verge (e.g. for the purpose of installation of services such as private stormwater, private gas line, private sewer, private water pipe, etc.). This Permit is to be

69. DADWF02 - Noise - Plant

All works carried out on site during construction/demolition/excavation or earthworks shall comply with the NSW Protection of the Environment Operations Act 1997. Approved and effective silencing measures shall be provided and maintained on all power-operated plant used on site if required.

(Reason: Safety and Amenity)

70. DADWF03 - Noise & Vibration

The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and cause no interference to adjoining or nearby occupations. Special precautions must be taken to avoid nuisance in neighbouring residential areas, particularly from machinery, vehicles, warning sirens, public address systems and the like.

In the event of a noise or vibration problem arising, the person in charge of the premises must, when instructed by City of Canada Bay Council or the Accredited Certifier, cease work and carry out an acoustical survey and/or investigation by an appropriate acoustical engineer or consultant and submit the results to Council. The person in charge of the site must implement any or all of the recommendations of the consultant and any additional requirements of Council. Any requirements of Council in this regard must be complied with immediately.

(Reason: Noise attenuation)

71. DADWG01 - Obstruction of Road or Footpath

The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste bins or any other matter is not permitted unless approved in accordance with Council's Waste Skip Bin Policy. A Penalty Infringement Notice may be issued for any offence.

(Reason: Protection of infrastructure, safety & information)

accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.

(Reason: Statutory requirement)

75. DADWI01 - Progress Survey - Major Development (greater than two stories)

In order to ensure compliance with approved plans, a Survey Certificate, prepared to Australian Height Datum, shall be prepared by a Registered Surveyor showing the following:

- (a) At the completion of excavation, prior to the placement of any footings, showing the completed level of the excavation and its relationship to the boundaries;
- (b) Prior to placement of concrete, the ground floor level, showing the level of the form work and its relationship to boundaries including relevant footpath and roadway levels;
- (c) Prior to placement of concrete at each second floor level showing the principal level of the formwork and the intended relationship of the completed works to the boundary;
- (d) Prior to roofing, or completion of the highest point of the building, showing the anticipated level of the completed work and the relationship to the boundary; and
- (e) At completion, works showing the relationship of the building to the boundary.

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

(Reason: To ensure compliance with approved plans)

76. DADWI03 - Inspection of on-site stormwater detention and stormwater quality improvement devices

The stormwater drainage, overland flowpath works and/or stormwater quality improvement devices shall be inspected during construction, by the Council if

The abovementioned Certificate is to certify that:

- (i) the stormwater drainage system and/or
- (ii) the car parking arrangement and area including circulating ramps, and/or
- (iii) any related footpath works, and/or
- (iv) the basement mechanical pump and well system, and/or
- (v) the proposed driveway and layback, and/or
- (vi) other civil works have been constructed in accordance with the Council approved plans and details and satisfies the design intent and complies with the appropriate SAA Codes, relevant Standards and Council's Policies and Specifications.

Two (2) copies of the above documents are to be provided to Council **prior to the issue of any Occupation Certificate.**

(Reason: Asset management)

78. Turning manoeuvre restrictions

All vehicles shall reverse into the service vehicle driveway and exit the site in a forward direction. Right turn movements into and out of the service vehicle driveway are prohibited. 'No Right Turn' signs shall be installed adjacent to the service vehicle driveway and within the boundaries of the site, one facing northbound traffic on Cooper Street, once facing vehicles exiting the driveway. Signage shall be installed in accordance with this requirement prior to the issue of an occupation certificate.

(Reason: Safety)

79. DAOCC01 - Civil Works on the Footway

The Applicant is required to carry out the following works:

- Reconstruct sections of cracked or defective footpath along the full frontage of the site where damage has occurred as a result of construction work, and/or
- Carry out works in relation to existing public drainage pit/pipe system as shown in the Stormwater Drawings, and/or
- Construct a new vehicular crossing in accordance with the approved drawings, and/or
- Remove any redundant vehicular crossings and replace with kerb and gutter to match the adjoining.

The above works must be completed to the written satisfaction of Council

82. DAOCD02 - Evidence of Lawful Asbestos Disposal

An Occupation Certificate for a development involving the removal of asbestos must not be issued until such time the applicant provides the principal certifying authority with a copy of receipt/s confirming lawful disposal of asbestos waste.

NOTE: Asbestos waste must be disposed at a waste management facility licensed by the NSW Environment Protection Authority (EPA) to accept such waste. Please see Appendix F of City of Canada Bay's Asbestos Policy, Contact NSW EPA on 131 555 or visit www.epa.nsw.gov.au for a list of waste management facilities licensed to accept asbestos waste.

(Reason: Health and Safety)

Conditions which must be satisfied prior to the issue of a Final Occupation Certificate

83. DAFOE01 - Certification of the Constructed Stormwater Drainage System

The constructed stormwater drainage system shall be certified by a Professional Civil Engineer whose qualifications are recognised by, and who is a current member of, Engineers Australia, as being designed and installed in accordance with Council's Appendix 2 - Engineering Specifications of the Canada Bay Development Control Plan", **prior to issue of the Final Occupation Certificate.**

(Reason: Adequate stormwater management)

84. DAFOE02 - Covenant & Restriction as to User for Stormwater Management and Controlled Systems

Prior to issue of the Final Occupation Certificate, the documents giving effect to the creation of Positive Covenant and Restriction on Use of Land over the constructed stormwater drainage, on-site stormwater detention and stormwater quality improvement devices (SQID) under Section 88E Instrument and/or Section 88B Instrument of the Conveyancing Act shall be submitted to the authority benefited for approval prior to lodge and register with the NSW Land Register Service. The wording of the terms of the Positive Covenant and Restriction on use of land shall be in accordance with

with Canada Bay Council's Development Control Plan, Section C7 Flood Control and the NSW Floodplain Development Manual. The plan or report shall be issued and certified by a suitable Chartered Professional Engineer with the Institution of Engineers Australia, and shall consider the following:

- a. The mobility of all persons in the building and how they can be accommodated during a flood evacuation when the storm event greater than 1%AEP storm event;
- b. The location of a safe congregation area, away from busy roads, and other hazards and the evacuation points of other residents or tenants of surrounding buildings;
- c. Detailed procedures that would be in place for an emergency such as warning systems, signage or evacuation drills; and
- d. Other emergency plans in place by being complementary and consistent.
- e. Confirming the flood mitigation works including flood gate and door have been installed within the development site for the development and basement protection up to the Probable Maximum Flood (PMF) storm event.

(Reason: Safety and Protection)

88. DAFOE06 - Completion of Tanking of Basement Floor

Prior to issue of an Occupation Certificate, a certificate of compliance for completed waterproofing of basement floor areas shall be submitted to the Principal Certifier by a suitably experienced Chartered Professional Engineer. The certification shall state the completed works had been undertaken in accordance with this consent and the approved construction certificate plan.

(Reason: Compliance of subsurface drainage management)

89. DAFOF05 - Maintenance Schedule of on-site stormwater detention and stormwater quality improvement devices

Prior to issue of an Occupation Certificate, a maintenance schedule for the stormwater drainage, on-site stormwater detention and stormwater quality improvement devices system, including a sketch plan of the components forming the sites stormwater drainage system shall be submitted. The maintenance schedule shall be prepared by a qualified hydraulic engineer.

(Reason: adequate maintenance of drainage system to achieve positive covenant)

- The property owner and/or building managers are responsible for presenting the bins to the bin presentation holding room identified on the approved plans, and returning them to the waste storage area

(Reason: Waste Management Control)

If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre or if legal advice or action is required, you may contact the Chamber Magistrate.

3. DAANN04 - Lapsing of Consent

In accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979 (as amended), this Development Consent lapses five (5) years after the date from which it operates unless building, engineering or construction work has physically commenced. **The relevant Construction Certificate must be obtained and the works commenced in accordance with the approved plans and specifications within five (5) years from the date of this Development Consent.**

4. DAANN06 - Process for Modification

The plans and/or conditions of this Consent are binding and may only be modified upon written request to Council under Section 4.55 of the Environmental Planning and Assessment Act, 1979 (as amended). The request shall be accompanied by the appropriate fee and application form. You are not to commence any action, works, contractual negotiations, or the like, on the requested modification unless and until the written authorisation of Council is received by way of an amended consent.

5. DAANN07 - Review of Determination

In accordance with the provisions of Section 8.2 of the Environmental Planning and Assessment Act 1979 (as amended) the applicant can request Council to review this determination. The request must be made and determined within legislated time period. A fee, as prescribed under Council's current Management Plan - Fees and Charges, is payable for such a review.

6. DAANN08 - Right of Appeal

Section 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979 (as amended), gives the applicant the right to appeal to the Land and Environment Court. Section 97 does not apply to the determination of a development application for State significant development or local designated development that has been the subject of a Commission of Inquiry.