

**JOINT REGIONAL PLANNING PANEL
(Sydney East)**

JRPP No	2011SYE104
DA Number	8.2011.232.1
Local Government Area	Mosman Municipal Council
Proposed Development	Demolition of above ground structures, retention of existing basement car parking and erection of a mixed use shop/multiple dwelling development building with associated car parking and landscaping
Street Address	710 Military Road
Applicant/Owner	IPM Pty Ltd
Number of Submissions	Fifteen on first notification. Five on notification of amended plans
Recommendation	Approval with conditions
Report by	Stan Fitzroy-Mendis, Team Leader

Assessment Report and Recommendation

TITLE: 710 Military Road

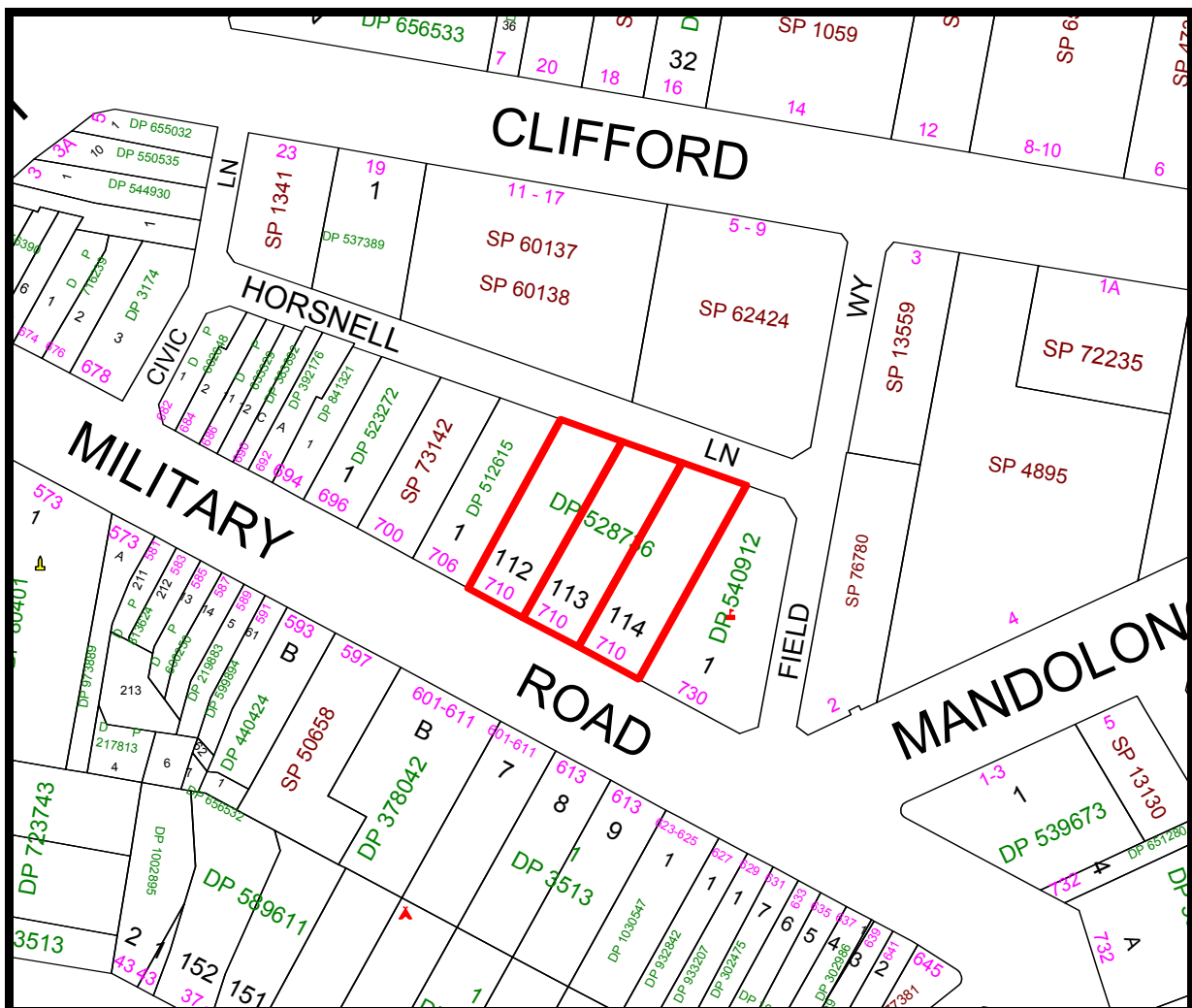
DA NUMBER: 8.2011.232.1

PROPOSAL: Demolition of above ground structures, retention of existing basement car parking and erection of a mixed use shop/ multiple dwelling development with associated car parking and landscaping

REPORTING OFFICER: Stan Fitzroy-Mendis, Team Leader

LODGEMENT DATE: 5 September 2011 (Downtime 50 days)

OFFICER'S RECOMMENDATION: Approval subject to conditions

LOCALITY MAP

EXECUTIVE SUMMARY

The development involves the partial demolition of the existing building, retention of the existing basement car park and construction of a new five (5) storey mixed use retail/residential building containing 3 retail tenancies, with associated loading bay area, plant rooms, and 36 dwellings. As the application has a capital investment value in excess of \$10 million dollars, it has been referred to the Joint Regional Planning Panel for determination.

During the course of assessment Mosman LEP 2012 (MLEP 2012) was gazetted. MLEP 2012 contains a savings provision which preserves MLEP 1998 for applications made prior to MLEP 2012 coming into force. The proposal does not comply with the floorspace ratio development standard in MLEP 1998; however it complies with the FSR in MLEP 2012. There is no development standard in relation to height for development within the 3(a1) Spit Junction Town Centre zone. The proposal is assessed as being consistent with the height objectives within Clause 18(1) of MLEP 1998 and this assessment finds that it complements the heights of adjoining buildings as required in the Mosman Business Centres DCP. The proposal is assessed as satisfactory with regard to the objectives and guidelines contained within SEPP 65.

The initial proposal received fifteen (15) submissions. The amended scheme received five (5) submissions. The submissions primarily relate to bulk, scale, height, view loss, traffic, manoeuvring, and issues relating to the proposed retail uses. An analysis of the issues raised is provided within Sections 5 of this report.

This assessment finds that the proposal as amended is reasonable with respect to views and the streetscape, is consistent with the zone objectives, has reasonable bulk and scale, and subject to conditions is suitable for approval.

REPORT

1.0 DESCRIPTION OF THE LOCALITY AND THE SITE

The subject site is located on the northern side of Military Road, between Civic Lane and Field Way. The site is irregular in shape with frontages of 37.69m to Military Road and 38.065m to Horsnell Lane. The site falls approximately 1.5m to the south at an average gradient of 4%.

The subject site presently contains a three (3) storey mixed use retail/commercial building configured as follows:

- Basement car parking for 98 cars;
- Ground Floor - eleven (11) retail tenancies;
- First Floor – ten (10) retail tenancies; and
- Second Floor – six (6) commercial tenancies.

The building is currently vacant. Prior to a recent basement level fire the basement car parking of the development was utilised for car parking which allowed for parking by members of the public as well as tenants of the building. Refer to Section 2.0 of this report for further information.

Immediately adjoining to the east is the Mosman Fire Station (No. 730 Military Road). Adjoining to the west is a two storey masonry building which is presently used for a shop (No. 706 Military Road). Adjoining to the north beyond Horsnell Lane are two multi-storey

multiple dwellings. These buildings are known as No. 11-17 and 5-9 Clifford Street respectively. No. 11-17 Clifford Street has a vehicular driveway that opens to Horsnell Lane, immediately opposite the subject site.

Surrounding development consists primarily of commercial and retail uses with some sites containing residential apartments and attached houses. It is noted that the properties to the north and east of the subject site are zoned Residential 2(e) under MLEP 1998. Photographs of the subject site and locality are at **Annexure A**.

The following known hazards and or policy affectations apply to the site:

Likelihood of contamination	No
Landslip	No
Bushfire hazard	No
Acid sulfate soils	No
Foreshore building line	No
Regional cycling route	No
Road or lane widening	No
Undergrounding of utilities	No
Rock faces & retaining walls	No
Wetlands	No

2.0 BACKGROUND

The relevant development history of the site has been researched and is provided below.

Parking arrangements agreement between Mosman Council and the land owner

In 1990 Council granted development consent No. 394/89. The consent permitted development of the land for mixed retail and commercial purposes subject to certain conditions including, (*inter alia*), Condition 99 which reads as follows:

Council being authorised to control and manage the car park to ensure efficient utilisation of available spaces and the legal requirements in this regard being discussed with Council's Town Planner prior to issue of the plans.

An agreement was subsequently struck between Council and the owners of the site to preserve car parking for public use, subject to certain terms. Council was authorised to control and manage the car park to ensure efficient utilisation of the parking spaces. To facilitate this, a three (3) hour time limit was imposed on the public parking spaces between 9:00am and 5:00pm daily.

In 2005 an amended Deed was signed between Council and the land owner. This deed noted that Council would enforce the imposition of the previously agreed time limit on free parking of not less than three (3) hours between 5.00am - 5.00pm daily. This did not apply to spaces on the bottom level for tenants.

Use applications during the site's life as a shopping centre

After development of the shopping centre, numerous development applications for shops and commercial tenancies for the site were approved. None of these are of particular relevance to this application. There have also been several complaints relating to food premises, air conditioning noise, and vehicular access relating to the site during its operation as a mixed use retail/commercial building.

The most recent development approval for the site involved alterations and additions to a mixed use commercial/retail building including changes to car parking, and internal and external reconfiguration was approved on 20 November 2008 (DA 8.2008.223.1). A deed relating to the operation of the car park was required in the conditions of consent.

Supermarket Proposal

Development application 8.2009.271.1 for the refurbishment of an existing building as a supermarket, associated administration offices, ancillary storage with rooftop plant, was refused by Council on 17 May 2010. An appeal was subsequently lodged with the NSW Land and Environment Court. On 14 January 2011, the Court found in favour of Council on all points raised and refused the application. The issues were as follows:

- Inconsistency with the 3(a) Spit Junction Town Centre zone objectives;
- Traffic;
- Road network impacts;
- Manoeuvring impacts;
- Car parking;
- Noise impacts to residents; and
- Waste management.

The development history of the site has been researched. Other than as stated above, there is no background information of particular relevance to this application.

3.0 DESCRIPTION OF THE PROPOSAL

The proposal consists of:

- Demolition of the existing three (3) storey building to the level of the existing car park;
- Construction of a new five (5) storey mixed use residential and retail building comprising:
 - three (3) ground floor (street level) shops;
 - four (4) storeys of multiple dwellings providing for thirty-six (36) dwellings comprising 2x studio dwellings, 17x one bedroom dwellings, 10x two bedroom dwellings and 7x three bedroom dwellings);
 - Utilisation of the existing basement level car parking accessed from Horsnell Lane providing for eighty-eight (88) car spaces for the residential and retail components; three (3) motorcycle bays and sixteen (16) bicycle spaces.
- Associated landscaping, largely through a central communal courtyard.

Amended Plans

Council raised a number of concerns during preliminary assessment of the application. These concerns required the submission of amended plans. These were submitted and renotified. The amendments are as follows:

- Set back of the eastern side at upper levels to reduce bulk and scale;
 - Blade walls between dwelling balconies designed to reduce prominence;
 - Proportion of face brick to modulate the side facades of the proposal;
 - Changes to the existing car park to improve circulation. This resulted in the reduction in the number of car parking spaces from 97 to 88 spaces and 3 motorcycle bays. The break down is as follows:
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- 42 dedicated residential car parking spaces;
- 9 residential visitor spaces; and
- 37 public/retail parking spaces.

Additional information

In addition to the modifications above, additional information was received as follows:

- A complete lower level basement plan showing visitor spaces in accordance with Council's controls and improved circulation between the retail and residential parts of the car park;
- Adaptable spaces in the car park;
- Various details on the plans including window treatments, roof plan details, swept path for vehicles, waste door for residential component, compliance with solar access requirements, unit storage, clearer survey plan, and details on structures excluded from demolition;
- An assessment from a qualified access consultant;
- A crime risk assessment against CPTED;
- Further traffic and manoeuvring information including a preliminary construction management plan.



Figure No. 1: *Photomontage of the proposal as viewed from Military Road (eastbound)*



Figure No. 1.1: Photomontage of the proposal as viewed from Military Road (westbound)

Amended plans for the scheme were submitted on 21 December 2011. Further information relating to construction methodology was received on 3 February 2012. With the exception of the extent of the setback on the 5th floor on the site's north-east corner, the amendments and additional information met Council's required amendments.

Plans depicting the extent of the proposal are provided within **Annexure B**.

No concurrent approvals are sought under the *Local Government Act 1993*.

4.0 APPLICABLE PLANNING CONTROLS

The following planning policies and control documents are of relevance to the development and were considered as part of the Section 79C assessment and form the basis of the Section 5.0 Planning Assessment:

- State Environmental Planning Policy No. 1 - Development Standards
- State Environmental Planning Policy (Major Development) 2005
- Deemed SEPP - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- State Environmental Planning Policy No. 55 - Remediation of Land
- State Environmental Planning Policy No. 65 - Design of Residential Flat Development
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy - Building Sustainability Index: BASIX 2004
- Mosman Local Environmental Plan 1998
- Mosman Local Environmental Plan 2012 (draft status)
- Mosman Business Centres Development Control Plan
- Notifications Development Control Plan
- Mosman Transport Development Control Plan
- Mosman Section 94 Development Contributions Plan 2006
- Public Domain Improvement Program for Mosman and Spit Junctions

5.0 PLANNING ASSESSMENT

5.1 NUMERIC CONTROLS SUMMARY TABLE

5.1.1 Mosman Local Environmental Plan 1998

LEP CONTROLS	CONTROL	PROPOSED	COMPLIANCE
Zoning	3(a1) Spit Junction Town Centre		
Site Area	N/A	1530m ²	N/A
Gross Floor Area		4806m ²	N/A
Floorspace Ratio	2 : 1	3.14: 1 (+ 57%)	No (SEPP 1)

5.1.2 Mosman Business Centres Development Control Plan

	CONTROL	PROPOSED	COMPLIANCE
Height	15m	15–15.6m	Part compliance
Minimum Floor to Ceiling Heights	2.7m	3.6–2.7m	Yes
Setbacks			
Street Wall – Military Road	2 Storeys	2 Storeys	Yes
Street Wall – Horsnell Road	2 Storeys	3 Storeys	No
Vehicular Gap in the Street Wall	9.5m (25% of frontage)	7.6 (vehicle driveway) 13.5 (local bay, no change)	N/A
Height plane – Military Road	45° height plane for external wall above the second storey	45°	Yes
Height plane – Horsnell Lane	45° height plane for external wall above the second storey	77°	No
Accessibility			
Disability Parking	Provide a minimum of 2% of car spaces for people with disabilities	2.7% provided (2 out of 88 spaces)	Yes
Privacy and Security			
Setbacks (to dwellings on Horsnell Lane)	6m - between non-habitable rooms or balconies and habitable rooms of adjacent buildings	10.4m	Yes
	9m – between non habitable rooms and habitable rooms of adjacent buildings	13m	Yes
	9m – between non-habitable rooms and habitable rooms of adjacent buildings	15.8m	Yes

	CONTROL	PROPOSED	COMPLIANCE
	12m – between habitable rooms and habitable rooms of adjacent buildings	17m	Yes
Private Open Spaces	Minimum area of private open space is 12% of the gross floor area of the dwelling	16.8% (minimum)	Yes
	50% of the private open space is to receive a minimum of 3 hours of solar access at mid winter	62%	Yes
	<50% of the private open space area is to be roofed for each dwelling	29 dwellings 100% – 90% roofed 8 dwellings 0% roofed	Partial
Energy Efficiency and Solar Access			
Solar Access	2 hours between 9.00 am and 3.00 pm to principle private open space and north facing windows of adjacent buildings	Satisfactory	Yes
Alternative Transport Facilities – bicycle spaces	18.2 spaces (1 space per 5 car spaces)	16 spaces provided at lower basement level	No

5.1.3 Mosman Local Environmental Plan 2012

	CONTROL	PROPOSED	COMPLIANCE
Height of buildings	15m	15m–16m	Partial
Floor space ratio	3 : 1 *	2.81 : 1	Yes

** Pursuant to Clause 4.4B of MLEP 2012 a maximum floorspace ratio of 3:1 is applicable to the proposal if the site is greater than 1,000m² and if the development is compatible with the desired future character in terms of building bulk and scale. This is discussed in the assessment pertaining to 'Floorspace Ratio' in Section 5.2.*

5.2 STATE & LOCAL ENVIRONMENTAL PLANNING INSTRUMENTS

5.2.1 State Environmental Planning Policy No. 1 (Development Standards)

An objection pursuant to State Environmental Planning Policy No.1 – Development Standards (SEPP No.1) has been made requesting variation to the following development standard prescribed under Mosman Local Environmental Plan 1998 (MLEP1998):

- Clause 17(2) Maximum Floorspace Ratio

Clause 17(2) Maximum Floorspace Ratio

The original proposal had a Floor Space Ratio (FSR) of 3.21:1. The amended scheme has a FSR of 3.14: 1 which exceeds the development standard of 2:1 in Clause 17(2) of MLEP 1998 by 1,744.2 square metres or 57%.

The objectives for the floor space ratio development standard in business zones are listed under Clause 17(1) of MLEP 1998. The reasonableness or necessity for compliance with the standard has been assessed against each of the objectives below:

17(1) The objective of this clause is to control the bulk and site coverage of buildings so that buildings resulting from new development are compatible with existing buildings.

In summary, the SEPP1 submission accompanying the application put forward the following arguments to support the numeric departure:

- a. the proposal incorporates setbacks at upper levels to reduce its perceived height, mass and bulk when viewed from surrounding areas;
- b. the proposal uses a mix of materials to modulate the façade and reduce perceived bulk and scale;
- c. the proposal uses balconies, and recesses to modulate the façade;
- d. a landscaped courtyard over existing structure is proposed on a site that currently has no landscaping.

Council's Assessment of the SEPP 1

When considering the FSR objective Council considered specifically the following words and terms:

- i. 'bulk';
- ii. 'site coverage'; and
- iii. 'compatibility with existing buildings'.

In this regard the following is noted:

1. The proposed shop part of the building has a comparable scale to the adjoining shop and commercial development fronting Military Road. Similarly, the residential component, whilst larger than adjoining residential, is of a similar scale with nearby residential development particularly at lower levels. The upper levels are sufficiently set back as to be not as prominent when viewed from the surrounding locality;
2. The proposed building height only marginally exceeds Council's controls stipulated at Control P1 at Section 5.2 of the MBCDCP;
3. The proposal complies with Council's street wall controls identified in Control P7 of Section 5.2 of the MBCDCP; and
4. The proposal complies with the building height plane controls stipulated in Control P11 of Section 5.2 of the MBCDCP.

State Environmental Planning Policy No.1 provides flexibility in the application of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objectives of the Act. In assessing the SEPP 1 objection the following steps have to be undertaken:

1. Clause 17(2) of MLEP 1998 has been identified as a development standard.
 2. The SEPP 1 objection has demonstrated why the variation to the development standard is unreasonable or unnecessary in the circumstances of the case.
 3. The SEPP 1 has demonstrated how the proposal has, notwithstanding the non-compliance with the development standard, satisfied the objectives of the standard.
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4. The variation is consistent with the objects specified in Section 5(a) (i) and (ii) of the Environmental Planning and Assessment Act. Flexibility in the application of the standard is consistent with “the proper management and development” of the land and the “promotion and co-ordination of the orderly and economic use and development of land.”
5. The SEPP No.1 objection is well founded and is consistent with the aims of the Policy as set out in Clause 3 of the SEPP and is satisfactory.

In the circumstances of the case, the variation to the development standard satisfies the objectives of the standard and is consistent with the objectives of Section 5(a) (i) and (ii) of the Act and the non-compliance with the development standard does not raise any matter of significance for State or regional environmental planning. Flexibility in the application of the standard is consistent with “the proper management and development” of the land and the “promotion and co-ordination of the orderly and economic use and development of land.”

The SEPP No.1 objection is well founded and is consistent with the aims of the Policy as set out in Clause 3. Consent may be granted pursuant to Clause 7 of the Policy.

5.2.2 State Environmental Planning Policy (Major Development) 2005

The provisions of State Environmental Planning Policy (Major Development) 2005 apply to the proposed development as at the time of lodgement the capital investment value was in excess of \$10 million. In accordance with the requirements of Section 13B(1)(a) of the SEPP, the application is defined as ‘regional development.’ In this case, the determining authority is the Joint Regional Planning Panel (Region East).

5.2.3 Deemed SEPP - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The deemed SEPP applies to the entire Mosman Municipal Council area identified on the Sydney Harbour Catchment Map. The site is not identified:

- (a) within the Foreshores and Waterways Area;
- (b) as a strategic foreshore site;
- (c) as a heritage item;
- (d) within the wetlands protection area;

and therefore only Part 1 is applicable. Part 1 identifies aims of the plan from (a) to (h). The aims set out in Part 1 of the deemed SEPP have been considered and the application is consistent with these aims.

5.2.4 State Environmental Planning Policy No. 55 - Remediation of Land

Under Clause 7(1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. The site has been used for retail purposes for a number of years and there is no history to suggest that the site is contaminated. The application does not require further consideration under Clause 7(1) (b) and (c) of SEPP 55.

5.2.5 State Environmental Planning Policy No. 65 - Design of Residential Flat Development

SEPP 65 applies to the proposal. This Policy aims to improve the design quality of residential flat buildings in New South Wales.

Clause 50 of the Environmental Planning and Assessment Regulation 2000 requires that an application that relates to a residential flat building be accompanied by a Design Verification Statement from a qualified designer. The Design Verification Statement submitted with the application states that the residential development was designed by Jeremy Bishop, a registered architect of Nettleton Tribe Partnership, and that it was designed in accordance with the Design Quality Principles of SEPP 65.

In accordance with Part 2 of SEPP 65 the design quality principles provide a guide to achieving good design and the means of evaluating the merit of proposed solutions. These design quality principles contained in SEPP 65 are assessed within **Annexure C**.

Additionally, there are a number of guidelines and rules of thumb contained in the Residential Flat Design Code which accompanies SEPP 65 that are applicable to the proposed development. The relevant points are addressed within **Annexure D**.

The assessment has found that the application is reasonable with regard to the requirements and guidelines within SEPP 65.

5.2.6 State Environmental Planning Policy (Infrastructure) 2007

The site has frontage to a classified road (Military Road). Clause 101 of State Environmental Planning Policy (Infrastructure) 2007 provides relevant matters for consideration. The proposed development is consistent with the provisions outlined at that Clause. In particular:

- the design of the vehicular access to the land will be safe, efficient and not interfere with the ongoing operation of the classified road; and
- the development is of a scale that will have a reasonable impact on the nature, volume, and frequency of vehicles using the classified road.

The NSW Transport, Roads, and Maritime Services Department has commented on the amended scheme and has no concerns subject to recommended conditions. Further discussion is found in Section 6.0 of this report. The proposal meets the general provisions of the Infrastructure SEPP and is satisfactory.

5.2.7 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: (BASIX) applies to the proposed development. The application was accompanied by a BASIX certificate.

Conditions of consent have been included in the recommendation to ensure the fulfilment of the commitments listed in the BASIX certificate, as prescribed by Clause 97A of the Environmental Planning & Assessment Regulation 2000.

5.2.8 Mosman Local Environmental Plan 1998 (MLEP 1998)

Permissibility

The site is zoned 3(a1) Spit Junction Town Centre.

The proposed works are defined as “demolition”, “car parking facilities”, “multiple dwellings”, and “shops” and are all permissible with Council’s consent pursuant to the development control table at Clause 16. The development satisfies the zone objectives.

Floorspace Ratio

The proposal exceeds the floorspace ratio development standard, however the application has been supported by a well founded objection pursuant to SEPP 1. The merits of the SEPP 1 objection have been assessed at Section 5.2.1. The proposal is assessed as satisfactory with regard for objectives at Clause 17 of MLEP 1998.

Height

The proposed works are satisfactory with regard for objectives at Clause 18 of MLEP 1998.

Excavation

No significant excavation is required. Conditions ensuring building safety are part of the recommendation.

Contaminated Sites

As the site has been used for retail purposes and there is no history to suggest that the site may be contaminated, for the purposes of this assessment the site is not contaminated and no remediation of land is necessary.

Land Levels and Erosion

MLEP 1998 indicates that consent of Council is required where a development has the effect of materially altering the shape or natural form of the land and as part of a development, control should be made of soil erosion, sedimentation, tree loss and drainage impacts associated with landform modification. Conditions are included in the recommendation to ensure that effective measures are used to minimise soil erosion and sedimentation loss resulting from the proposed development.

Heritage

The subject site is situated within a heritage conservation area. Part 9 of MLEP 1998 provides the heritage controls. The application has been referred to Council's Heritage Advisor. The proposal is satisfactory with regard heritage provisions and objectives at part 9 of MLEP 1998.

Aboriginal Heritage

The site is not known to contain an Aboriginal object or Aboriginal place nor is it in an area known to be sensitive to the discovery of Aboriginal objects or Aboriginal places.

5.2.9 Mosman Local Environmental Plan 2012 (MLEP 2012)

MLEP 2012 was made on 9 December 2011 and took effect from 1 February 2012. As the development application was lodged prior to 1 February 2012, Clause 1.8A (the transitional provision) is applicable and provides as follows:

If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.

As MLEP 2012 has been made it has been afforded determinative weight in the assessment of the application. The subject site is zoned B2 Local Centre under the provisions of MLEP 2012.

The proposed works are defined as car parking, residential flat building, and commercial premises, noting that the definition of commercial premises incorporates retail premises. All of these uses are permissible with consent pursuant to the land use table of MLEP 2012. The proposed development is consistent with the aims and objectives of MLEP 2012.

An assessment against the principle development standards of MLEP 2012 relating to height of buildings and floor space ratio is provided in section 5.1.3 of this report.

Clause 4.4B (Spit Junction) – floor space ratio incentives

The Clause has a number of objectives that encourage the development of larger sites in the Spit Junction local centre to facilitate better built form and urban design. The site falls within the area applicable pursuant to Clause 4.4B(2), which allows for a maximum FSR of 3:1 over the site. The proposal meets these requirements as follows:

- The site area is within 'Area 2' as identified on the Floor Space Ratio Map thus satisfying Clause 4.4B(2);
- Vehicular access is provided away from Military Road, from Horsnell Lane, thus satisfying Clause 4.4B(2)(b);
- The amended scheme is compatible with the desired future character of the locality in terms of building bulk and scale, thus satisfying Clause 4.4B(3)(c);
- The proposal will not unreasonably diminish the development potential of adjoining properties. They will continue to benefit from this Plan, noting that the development is of an existing lot, requires no consolidation, and adjoining property owners have not raised concern with the re-development potential of their land.

In summary, the proposal meets the objectives of the FSR under the MLEP 2012 which allows for a maximum FSR of 3:1. The proposal falls under this FSR at 2.89:1 and is satisfactory.

The site is not a heritage item however is within a heritage conservation area pursuant to Schedule 5 of MLEP 2012.

5.3 DEVELOPMENT CONTROL PLANS AND POLICY CONSIDERATIONS

5.3.1 Mosman Business Centres Development Control Plan (MBCDCP)

Town Centre Controls

The site is located within the Spit Junction Town Centre. The relevant centre objectives are as follows:

- A viable and vibrant mixed use centre, providing a diversity of retail, commercial, entertainment, residential, and other uses;
- Accessible businesses and services;
- Buildings that are compatible in scale, height, character, and form within the existing streetscape; and
- Pedestrian and functional links including through site links to arcades and laneways.

The proposal is consistent with the Spit Junction Town Centre controls as discussed below:

Height

Control P3 of Section 5.2 of the MBCDCP requires that the building height for all sites fronting Military Road and Horsnell Lane are to complement the heights of adjoining buildings. The existing part two/three storey presentation to Military Road is proposed to be retained. Additional height at upper levels is proposed to be set back, will have less visible impact from the public domain, and is considered satisfactory. A similar treatment has been given to Horsnell Lane which also is considered satisfactory.

Floorspace Ratio

Control P6 of Section 5.2 of the MBCDCP includes the maximum floor space ratio for the area as 2:1, which reflects the LEP 1998 control. A discussion on how the proposal meets the objectives of this control is provided at Section 5.2.1.

Setbacks

Control P4 of Section 5.2 of the MBCDCP requires that buildings be aligned along the street frontage to create a consistent street wall no higher than two (2) storeys. External building walls above the second storey are to be within a 45 degree height plane from the top of the 2 storey street wall. The proposed Military Road street wall is within this control. External building walls above the second floor are within the height plane and are satisfactory. The Horsnell Lane frontage does not satisfy this control. Consideration was given to the laneway character of this frontage, and the application of the control for similar recent development, such as 732 Military Road, which also has a rear lane way frontage. Additional setbacks were required on the eastern side at upper levels to reduce bulk and scale and improve privacy. The setbacks proposed in the amended scheme are considered satisfactory. Conditions are recommended to satisfy acoustic privacy.

Shop Frontages

Control P13 of Section 5.2 of the MBCDCP requires facades to the street to have clear glazing and not incorporate roller shutters. The proposal incorporates clear glazing, and a recommended condition of consent will ensure that roller shutters are not installed.

Defined Pedestrian Access Points

Control P14 Section 5.2 of the MBCDCP requires that shops have well defined pedestrian access points. This issue was considered at length and balanced against Heritage and Conservation principles during assessment. On balance, the façade detailing is satisfactory, whilst ensuring acceptable levels of pedestrian through traffic. This is discussed further below.

Through Site Connections

Control P15 of Section 5.2 of the MBCDCP requires that sites that front both Military Road and Horsnell Lane, incorporate through site connections to improve pedestrian accessibility, safety, and amenity. The proposal has incorporated a through site access which meets these objectives with deliveries and service areas for the retail shops fronting Horsnell Lane. This is satisfactory, subject to recommended conditions on the management of deliveries.

Awnings

Control P 16 of Section 5.2 of the MBCDCP provides for desirable awning details for the site. There is an existing awning to the building. Approval is sought to replace this awning with a

new box awning. The control requires traditional box awnings. These awnings must be provided along the Military Road frontage.

Stormwater run off from the awning

It is noted that in inclement weather, the existing awning drains directly to the street and does not include a stormwater down pipe. This is unsatisfactory and is a pedestrian hazard. A condition of consent has been incorporated, requiring the new awning to be plumbed to down pipes, which flow directly to Council's Stormwater system.

Façade Treatment above the Street Wall

Controls P20-25 of Section 5.2 of the MBCDCP inform façade treatments above the street wall. The façade for the Cache site is particularly sensitive, given its heritage and conservation context, in combination with its wide street facade relative to the other single shop frontages that comprise this precinct. The initial scheme did not meet the relevant controls. However amendments were sought and provided as follows:

- A greater proportion of face brick was required to clad the building;
- Building structures were maintained that minimised large expanses of walls and glazed areas;
- Parapets, spandrels, and balustrades were incorporated into the design, particularly at upper levels to modulate the facade; and
- Vertical elements of the façade, including columns and blades have been incorporated to better modulate the façade to Military Road.

Accordingly, the proposal now satisfies the controls.

Rooftops

Control P26 of Section 5.2 of the MBCDCP informs the roof forms of buildings in the street. The proposed flat roof would not be a significantly visible element from the public and is satisfactory.

Vehicular Access

Controls P28-32 of Section 5.2 of the MBCDCP discusses controls for vehicles to sites. Relevant controls include vehicular entry and exit points not disrupting pedestrian routes and the streetwall. No changes are proposed to the service or car park entry arrangements for the site, although internal changes to the car park are proposed.

Heritage Items and Conservation Areas

Objectives O1-O8 in combination with E17-23 of Section 6.2 of the MBCDCP provides for Heritage and Conservation controls for sites in the Spit Junction Precinct. The amended proposal has been assessed against these criteria and is considered satisfactory.

Accessibility

Control 6.3 of the MBCDCP requires consideration of accessibility for sites. This is particularly important for mixed use retail/residential buildings. A recommended condition requires full compliance with relevant accessibility provisions.

Advertisements and Business Signs

No signage is proposed with this application.

Views

Concerns in relation to view loss were raised by two unit owners in 11-17 Clifford Street, being Units 17 and 18. The owners of Unit 16 of 5-9 Clifford Street also raised concerns over potential view loss. These three units are located on the top floor of two multiple dwelling buildings fronting Horsnell Lane, to the rear of the site. All of these dwellings have balconies that face the subject site. In addition, they all have roof top terraces, one of which is accessible from within the apartment itself (16/5-9 Clifford Street).

The view from these areas is of the city skyline and the top of the Harbour Bridge; as well as out through 'The Heads' and towards Manly in the northerly direction.

These submissions raise concern over loss of views of the Sydney CBD and towards the eastern suburbs. Photos of view affectation are provided in Figures 3 to 5 below:



Figure 3: Standing View from balcony of 18/11-17 Clifford Street



Figure 4: Standing View from the roof top terrace of 17/11-17 Clifford Street



Figure 5: Standing view from the roof top terrace 16/5-9 Clifford Street

The Land and Environment Court Planning Principle (Tenacity) has been taken into consideration during the assessment process. This assessment is provided below.

Two units at 11-17 Clifford Street (units 17 and 18) and Unit 6 of 5-9 Clifford benefit from southerly city views and the associated eastern suburbs. The views are district views, with water glimpses. The principle views from all of these properties are to the east towards the Heads, water views associated with this, and views of Manly. The view corridor from Unit 6/5-9 Clifford Street also captures the flagtops of the Harbour Bridge. The views are interrupted by the crowns of trees and the tops of buildings fronting Military Road as shown in Figures 3 to 5.

The view from 17/11-17 Clifford Street is from a standing position in the living room and bedrooms 1-3. The views are of the skyline only, with no visible water or iconic harbour features from any of these rooms. The proposal will not result in any view loss as recognised in Tenacity.

The proposal will result in the loss of some minor city views from the balcony of 18/11-17 Clifford Street. No significant water views will be lost.

The proposal will not result in the loss of water views from 6/5-9 Clifford Street.

Qualitatively, view loss is assessed as low. The assessment of the view impact is provided below:

- Whilst the sites presently enjoy the views from the top floors at Clifford Street and from roof top terraces, the affected views are of the Sydney CBD, eastern suburbs skyline, and in the case of No. 18/11-17 Clifford Street, some distant and incomplete water views.
- The principle water views from all of the dwellings are towards the Heads and Manly. All of these views remain intact;
- The area of view loss is as a result of a generally complying height under MLEP 2012. The preservation of these views is unrealistic in circumstances where the controls under section 4.3(b)(i) of MLEP 2012 encourage compatibility with the desired future character of the area.
- The control at Section 4.3(b)(ii) of MLEP 2012 also provides buildings of a greater height than existing development in suitable locations to achieve Council's residential strategy. In this regard the height of the building is assessed as compatible when compared with surrounding built form;
- To require a reduction in the wall height would be unreasonable as this would result in the loss of the fourth storey and a significant loss of development yield which is within the 3:1 maximum provided under MLEP 2012. In the context of a scheme which complies with the floorspace ratio standard, is assessed as compatible with the desired future character of the area, and in the context of a building that is satisfactory with regard to SEPP 65, the proposal's impact on views is assessed as reasonable.

Energy Efficiency and Solar Access

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 states that the provision of the BASIX Certificate overrides the MBCDCP that would otherwise add to or subtract from the BASIX requirements. Conditions have been included in the recommendation to achieve the fulfilment of the BASIX requirements.

The individual dwellings within the proposal comply with the minimum solar access and natural ventilation requirements as stated within the SEPP 65 rules of thumb, it being noted that the majority of dwellings are orientated favourably.

MBCDCP requires that dwellings should be sited and designed to maximise sunlight to north facing windows of habitable and principle areas of open space. North facing windows to living areas and main ground level private open space of neighbouring buildings should not have sunlight reduced to less than two hours between 9am and 3pm on 21 June.

The applicant has submitted plan and elevation shadow diagrams to assess the impact on overshadowing to neighbouring properties. The shadow diagrams illustrate the impact of overshadowing from the existing and proposed development at 9am, 12 noon, and 3pm on 21 June. At this time, due to lot orientation the proposal will result in:

- overshadowing to Military Road and the adjoining retail precinct at 9:00am;
- at Midday shadows will fall on Military road and the Mosman Fire Station;
- at 3:00pm shadows will fall on the south-eastern part of the town house development fronting Field Way.

The shadow diagrams and a site inspection illustrate that the habitable rooms of 1-3 Field Way all receive solar access from the East. This is in part due to the orientation, and nature of the townhouse development that fronts this street. In the context that the proposed building height and mass is consistent with the desired future character of the area, the proposal complies with Councils minimum solar access requirements and subject to conditions the development contains sufficient energy efficient initiatives.

5.3.2 Mosman Transport Development Control Plan (TDCP)

Section 1.7 of the MTCDP states:

In circumstances where a site is being fully redeveloped or extensively changed (i.e. where an existing building is demolished and replaced by a new building or where greater than 50% of the building fabric is being demolished) the proposal should be designed to comply with the relevant provisions of this Transport DCP. That is, car parking credits do not apply in circumstances where a building is extensively changed or demolished.

As the proposal relates to a redevelopment of the site above graded level, the proposal is expected to largely satisfy all relevant provisions of the MTDCP.

Vehicular Access

Vehicular access frontage

The site has frontage to Military Road and a secondary frontage to Horsnell Lane. In accordance with the desired character of the Spit Junction Town Centre contained within Section 4.4 of MBCDCP, pedestrian and functional links between rear lanes and main streets are encouraged. The proposed development satisfies this requirement.

Horsnell Lane receives regular traffic from vehicles gaining access to the dwellings on this and adjoining laneways and from the retail and commercial development in the vicinity of the subject site.

Many objections in relation to the development application are based around concern with additional traffic loads on Hornsell Lane and the proposal's shortfall in meeting parking

requirements. In this regard traffic impacts are assessed as reasonable. Relevant comments from the Transport, Roads & Maritime Authority can be viewed in Section 6.0 of this report. In addition the applicant has submitted supporting information from a traffic consultant using a recognised vehicular turning template which concludes that the proposal will cater for the necessary vehicles likely to use the site. In this context the proposed vehicular access arrangements and additional traffic loads are assessed as satisfactory.

Equitable Access to the Car Park

Council's Traffic engineer raised concerns about the grading of the car parking entrance ramp fronting Hornsell Lane. The ramp does not comply with AS/NZS 2890.1:2004. No changes are proposed with the application to the vehicular ramp. However this ramp facilitates a change of use for residential purposes. Compliance with the standard would better facilitate the proper use of this part of the development, and would also better improve equitable access to the retail component of the building. Accordingly it will be included as a condition of consent.

On Street Parking and Loading

Council's traffic engineer noted that there may be increased conflict between commercial and residential vehicles in Horsnell Lane as a result of the proposal.

This assessment finds the access to and provision of residential parking to be satisfactory. Any potential conflict issues from the operation of the shops are best dealt with in future applications for their use.

Car parking

Section 2 of the MTDCP requires that parking facilities should be provided in accordance with the rates and requirements specified in table 2.2 of MTDCP. The minimum car parking requirements for the proposed development is outlined in the table below:

Type of Space	Rate	No. of required spaces	No. of proposed Spaces	Complies
Car Parking Spaces – retail (shop)	1 space required per 16m ² of gross floor area	1105m ² of gross floor area. 47 retail spaces required(rounded to nearest whole number)	37	No
Car Parking Spaces - Residential	1 space per each 1 bedroom dwelling	19 spaces		
	1.2 spaces per each 2 bedroom dwelling	14.4 spaces		
	1.5 spaces per each 3 bedroom dwelling	9 spaces		

Type of Space	Rate	No. of required spaces	No. of proposed Spaces	Complies
		Total: 42 residential spaces required (rounded to nearest whole number)	42	Yes
Visitor Parking Spaces	1 visitor space per 4 dwellings	9 visitor spaces required (rounded to nearest whole number)	9 spaces	Yes
		Total required = 120 spaces	Total proposed = 88 spaces	No
Motor Cycle Parking	1 space per 25 dwellings	1 space (rounded to nearest whole number)	3 spaces	Yes
Bicycle Parking	1 space per 4 dwellings	9 spaces (rounded to nearest whole number)	16	Yes
Disabled Parking	Required in conjunction with accessible unit and relevant Australian Standards.	Width 3.8m Length 5.5m Height 2.5m	2	Yes
Car Wash Bay	1 bay per 12 dwellings	3 car wash bays	1	No

5.3.3 Mosman Section 94 Development Contributions Plan 2006

The application includes 19x1 bedroom, 10x2 bedroom and 7x3 bedroom dwellings and attracts a s.94 contribution of \$455,986.48. A condition is included in the recommendation.

5.4 ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

Applicable regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia, compliance with the Home Building Act, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection may be addressed by appropriate consent conditions in the event of an approval.

6.0 COMMENTS FROM COUNCIL DEPARTMENTS OR STATE AUTHORITIES

Council's Landscape Designer raised no objection subject to conditions.

Council's Development Engineer raised no objection subject to conditions.

Council's Heritage Advisor raised no objection subject to conditions.

Council's Manager Assets and Services raised no objection subject to conditions.

Council's Environmental Health Officer raised no objection subject to conditions.

Council's Waste Officer raised no objection subject to conditions.

The Transport, Roads & Maritime Authority were satisfied, subject to standard conditions as follows:

1. *The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1 – 2002 for heavy vehicle usage.*
2. *All works associated with the proposal shall be at no cost to RMS.*

In addition, advisory comments for Council's consideration were made as follows:

- All vehicles should be wholly contained on site before being required to stop.
- All vehicles should enter and exit in a forward direction.

Comment: The above mentioned matters raised by the Transport, Roads & Maritime Authority have been incorporated into the recommendation as conditions of consent.

7.0 PUBLIC NOTIFICATION AND SUBMISSIONS

The application was notified between 16 September, 2011 and 4 October, 2011. This generated fifteen (15) submissions from or on behalf of the following properties:

- 1/2A Dalton Road, Mosman;
- Suite 6, Level 2 32A Oxford Street, East Sydney;
- 15/11-17 Clifford Street, Mosman;
- 11/11-17 Clifford Street, Mosman;
- 1/1 Field Way, Mosman;
- 2/1 Field Way, Mosman;
- 3/1 Field Way, Mosman;
- 5/1 Field Way, Mosman;
- 16/5-9 Clifford Street, Mosman;
- 17/11-17 Clifford Street, Mosman;
- 18/11-17 Clifford Street, Mosman;
- 4/7 Clifford Street, Mosman;
- 15/11-17 Clifford Street, Mosman;
- 6 Arburtus Street, Mosman;
- 5/9 Clifford Street, Mosman;

Amended Plans were notified between 3 and 19 January, 2012.

Notification of the amended scheme generated five (5) submissions from or on behalf of the following properties:

- 17/11-17 Clifford Street, Mosman;
- 16/11-17 Clifford Street, Mosman;
- 11/11-17 Clifford Street, Mosman
- 1/1 Field Way, Mosman

Matters raised within public submissions and commentary on those matters is summarised below:

- Land Use ;

Concern has been raised about the land use mix, what the end retail use may be, and the potential impacts from those uses such as traffic, waste management, and odours emanating from the use. Council's controls do not specify a proportion of retail/residential, however it is noted that the entire ground floor of the site is proposed to be comprised of three retail shops with loading, waste management, and ancillary areas such as a plant room. This is the general practice for similar mixed use retail/residential developments in the locality and is satisfactory.

Comment: With regard to the end use, unless allowed under an Exempt or Complying Development policy, approval for the retail uses must be through the development application process. Notwithstanding this, conditions relating to waste disposal, noise, parking, and manoeuvring have been included in the recommended conditions of consent.

- Bulk and Scale;

Comment: The proposed departure in FSR and height has been assessed. The amended scheme with increased setbacks will result in a building that is compatible with other similar buildings in the locality in terms of bulk and scale. This is largely due to the massing at lower levels, and the increased setbacks at upper levels from the relevant vantage points such as Military Road, Field and Horsnell Lanes.

- Height;

Comment: The proposal meets the height objectives in Clause 18 of LEP 1998 and the relevant height objectives in the MBCDCP and is satisfactory.

- View Loss;

Comment: The proposal is consistent with the now gazetted LEP 2012 height controls. The impact on views is addressed at section 5.3.1.

- Setbacks;

Comment: Amended plans were sought and provided. These amendments required further setbacks at upper levels to improve the street presentation of the building. Setbacks are discussed in Section 5.3.1.

Solar Access;

Comment: Solar access is satisfactory and discussed in Section 5.3.1.

- Privacy ;

Comment: Acoustic and visual privacy were both identified as concerns. They addressed at Section 5.3.1.

- Traffic and access;

The traffic impacts have been assessed as satisfactory. This is discussed in Section 5.3.2.

Access to loading dock

Comment: The loading dock assess has been assessed as satisfactory in the circumstances, subject to conditions.

- Heritage;

Comment: Council's heritage advisor considers the application satisfactory. This is discussed in Section 6.0.

- Public Parking;

Comment: Part of the car park has been nominated as public parking with similar arrangements to the current car park. This is dealt with by condition of consent.

- Construction Management;

Comment: Conditions of consent have been included in the recommendation in relation to construction management.

8.0 CONCLUSION

The site is comparatively large and is located in an established heritage and conservation precinct. Issues relating to heritage conservation, traffic, and parking raised during assessment required amended plans to be submitted. These amended plans and information are satisfactory and are the subject of this report. The proposal appropriately relates to the local context and is satisfactory with regard for the objectives and planning guidelines within MLEP 1998, MLEP 2012, and MBCDCP. The proposal is assessed as a satisfactory development having regard for matters for consideration at s.79C of the Act and is recommended for approval subject to conditions.

9.0 APPLICATION DETAILS

The applicant is IPM Pty Ltd. The estimated value of works is \$11,564,951.

No disclosures with respect to the Local Government and Planning Legislation Amendment (Political Donations) Act 2008 have been made.

RECOMMENDATION

- A. That the objection made under State Environmental Planning Policy No. 1 to the development standard relating to the maximum 2:1 limit within Clause 17(2) of Mosman Local Environmental Plan 1998 is well founded, and in this case varying the standard to permit the proposed development is acceptable for the following main reasons:
 - (a) The proposal meets the objectives of the development standard;
 - (b) The design of the proposal appropriately responds to the constraints of the site, and the context of surrounding development;
 - (c) The areas of non-compliance will not cause significant detrimental impacts on adjoining properties; and
 - (d) Requiring compliance with the standard would unreasonably constrain the development and the design response.
 - B. That Development Application No. 8.2011.232.1 be approved subject to the following conditions:
-

APPROVED PLANS AND DOCUMENTATION

- The development must be carried out in accordance with the following stamped approved plans and documentation, except where amended by later conditions of consent:

Drawing Nos.	Date of drawing	Prepared by
DA01A- to DA03A inclusive	December 5, 2011	Nettleton Tribe Architects
DA04 to DA 08		Nettleton Tribe Architects
DA09A		Nettleton Tribe Architects
DA10		Nettleton Tribe Architects
DA11A to DA14A		Nettleton Tribe Architects
DA15A to DA17A		Nettleton Tribe Architects
DA21A to 22A		Nettleton Tribe Architects
DA31A to DA32A		Nettleton Tribe Architects
DA41A		Nettleton Tribe Architects
DA51A		Nettleton Tribe Architects
DA81A		Nettleton Tribe Architects
DA91		Nettleton Tribe Architects
Sheet 1-3	19 Sept, 2007	Project Surveyors
1823 LP-01-02	22/8/11	John Couls & Associates
HbA00/P2	August 2011	Whipps-Wood Consulting
Finishes Board	July 2011	Nettleton Tribe Architects

Document title	Date of document	Prepared by
Statement of Environmental Effects	5 August 2011	JBA Planning
ABSA Certificate	20 December 2011	Certificate No 20859
BASIX Certificate	21 December 2011	NSW Department of Planning and Infrastructure
Access Review	20 December 2011	Morris-Goding Accessibility Consulting
Crime prevention through environmental design report	December 2011	JBA Planning

The following conditions must be satisfied prior to the release of the Construction Certificate.

Conditions may require the submission of additional information with the Construction Certificate application. Applicants should also familiarise themselves with conditions in subsequent sections and provide plans in accordance with any design requirements contained therein.

A Certifying Authority must not issue a Construction Certificate for development on a site which affects an existing building unless a Council, a Consent Authority or an Accredited Certifier has carried out an inspection of the building.

Car Parking Demand and Parking Management

- To assist in the appropriate management of traffic through Field Way, Horsnell Lane and within the car park, the applicant is to provide details to Council regarding the installation of parking monitoring devices within the car park and the installation of Electronic Signage on the underside of the shop awning or the corner of Military Road and Field Way. The parking monitoring devices are to provide for remote individual bay monitoring by Council and within the car park. The signage is to be sympathetic

with the streetscape. All details of the system are to be approved by Council prior to the issue of a Construction Certificate. The costs of these works are to be borne by the applicant.

Construction Certificate Application Plans

3. Two copies of architectural and Structural Engineer's plans must be submitted with the Construction Certificate application. The structural engineering plans must be signed by a qualified practicing Structural Engineer with membership of the Institute of Engineers Australia or who is eligible to become a member and has appropriate experience and competence in the related field.

The plans are to incorporate and note any changes from the approved development application plans as required by conditions of this consent.

For applications involving alterations and additions, one set of plans should be coloured which indicate the extent of new works.

Dilapidation Report – Council Assets

4. To assist with an assessment of claims for the refund of the security deposit over Council's property, a dilapidation report must be submitted. The dilapidation report shall be submitted as a PDF in Adobe format or in A4 format. The report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, street trees, street signs or any other Council assets in the vicinity of the development. Any damage not shown in this manner will be assumed to have been caused as a result of the site works undertaken and must either be rectified at the applicant's expense or compensated by deduction from the security deposit.

Dilapidation Report – Private Assets

5. The applicant shall supply Council with a dilapidation report for the adjoining properties at 706 Military Road and 730 Military Road which documents and photographs the condition of buildings and improvements on those properties. The dilapidation report shall be submitted as a PDF in Adobe format or in A4 format. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of nominated properties. Council shall be provided with a list of owners to whom a copy of the report has been provided.

Retaining Walls

6. If soil conditions require it, retaining walls or other approved methods necessary to prevent the movement of soil, together with associated stormwater drainage measures, shall be designed by a civil engineer or other appropriately qualified person. Details of any retaining walls shall accompany plans and specifications submitted with the Construction Certificate application.

Council Property

7. Two copies of Structural Engineer's plans, signed by a qualified practicing Structural Engineer with membership of the Institute of Engineers Australia or who is eligible to become a member and has appropriate experience and competence in the related field, must be submitted with the Construction Certificate application for the proposed retaining wall/s which provide structural support to Council's road. The design load of the retaining wall shall consist of the following:

- a minimum surcharge load (UDL) of 5.0 kPa;

- a minimum point load of 31 kN acting on an area of 0.025 m² at a maximum distance of 0.5 m from the site boundary.

The plans are also to demonstrate adequate shoring works during all stages from the removal of the existing structural support until the construction of the new wall is complete.

8. Due to the increase pedestrian activity as a result of the development, the existing pedestrian crossing outside 710 Military Road is to be upgraded to a raised pedestrian threshold. Construction design details are to be supplied to Council for approval prior to the issue of the Construction Certificate. All costs associated with preparation of these plans and undertaking of these works are to be at the applicants expense.
9. The paved area fronting Military Road on Council property is to be repaved in Council's standard paving and borders. Details of the re paving for the entire property frontage is to be submitted to Council for approval prior to the issue of the Construction Certificate. The planter boxes are to be replaced with suitable trees with a pervious paving base to be specified by Council's Landscape Architect. All costs associated with preparation of these plans and undertaking of these works are to be at the applicants expense.

Excavation, Backfilling and Support for Neighbouring Buildings

10. Excavation works shall not commence prior to the issue of the Construction Certificate or the issue of any relevant notices to adjoining owners, the Principal Certifying Authority or Council as required by other conditions of this consent.

Drainage

11. Stormwater shall be directed to the street gutter via a charged pipe system. Detailed drainage plans must be submitted with the Construction Certificate application and certified as complying with Council's policy "*Stormwater Management in Mosman*" by a Civil Engineer with membership of the Institute of Engineers Australia or who is eligible to become a member and has appropriate experience and competence in the related field.
12. The awning to Military Road shall not drain directly to the street. All stormwater is required to drain via down pipes and be connected directly to the building drainage system or directly to Council's stormwater pipeline in Military Road. Details are to be provided to the Principal Certifying Authority or Council prior to the issuance of the Construction Certificate.
13. To ensure draining connection/s are properly completed, the applicant shall complete an *Application to Connect to Council's Stormwater Pipelines or Gully Pits* and / or a *Road Opening Permit* and pay the applicable fee prior to the issue of the Construction Certificate. Both forms are available from Council.

Rainwater Re-use System/On-site Detention

14. Having regard to hard surface areas proposed, the capacity of the stormwater system and the need to retard the flow of stormwater in peak flow periods, an on-site detention system shall be provided. Detailed plans shall be submitted with the Construction Certificate application and certified as complying with Council's policy for Stormwater Management in Mosman by a Civil Engineer with corporate membership of the Institute of Engineers Australia or who is eligible to become a corporate member and has appropriate experience and competence in the related field. Where

located below a driveway or built structure, the engineer is to certify that the on-site detention system has been designed to withstand all loads likely to be imposed on it.

Alternatively the applicant has the option to utilise rainwater re-use tanks in lieu of or in conjunction with on-site detention tanks. Rainwater re-use tanks can be used to offset the volume requirements of the on-site detention tanks in accordance with Council's policy for Stormwater Management in Mosman. The offset ratio for OSD to rainwater tanks is: 1 cubic meter of OSD is equivalent to 3 cubic meters of rainwater storage. It should be noted that these tanks are to be at a minimum connected to the toilet and washing machine to achieve this offset.

Sydney Water

15. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. For Quick Check agent details please refer to the web site www.sydneywater.com.au (see Building Developing and Plumbing then Quick Check) or telephone 13 20 92. The consent authority or a Certifying Authority must ensure that a Quick Check agent/Sydney Water has stamped the plans before the commencement of work.

Driveway

16. The internal driveway and parking area shall be designed in accordance with Australian Standard 2890.1-2004 and specifications in Council's *Transport Development Control Plan*. Longitudinal sections for both sides of the vehicular crossing and driveway commencing at the centre line of the road carriageway shall be provided with the Construction Certificate application demonstrating that vehicles will not scrape their undercarriage.
17. To ensure the vehicle crossing is properly completed, the applicant shall complete and pay applicable fees for an application under Mosman Council's *Construction of Vehicle Crossing By Contract*.

Materials & Finishes

18. Materials and finishes shall be complementary to the character and streetscape of the area. Highly reflective roofing materials shall not be used. Details of finished external surface materials, including colours and texture, must be submitted to the satisfaction of Council or the Accredited Certifier.

Protection of Landscape Features

19. To limit the potential for damage to the following tree/s to be retained, the tree protection zone of each of these trees shall be provided with tree protection measures installed in accordance with *Australian Standard 4970-2009 Protection of Trees on Development Sites*.

Species	Location
Chinese Elm (<i>Ulmus parvifolia</i>)	Street tree on Military Road frontage

Details demonstrating compliance with the standard prepared and certified by an AQF5 or higher qualified arborist shall be submitted with the construction certificate application.

Landscape Plan

20. A landscape plan prepared by a qualified Landscape Architect or Landscape Consultant to a scale of 1:100 or 1:200 and conforming to Council's Business Centres Development Control Plan and relevant conditions of this Consent, must be submitted to Council's or the Accredited Certifier's satisfaction with the Construction Certificate application.

The plan must include the location of all existing and proposed landscape features and delineate trees to be retained, removed or transplanted. The Plan must also show existing and proposed finished ground levels and a detailed planting schedule which includes species listed by botanical and common names, quantities of each species, pot sizes, and the estimated size of the plant at maturity. Consideration within the design should be given to the scale of planting in proportion to the development, consistency with the landscape character of the area and the views, solar access and privacy of neighbouring development.

Landscape Irrigation

21. To ensure the site landscaping thrives, the on slab planters and turf shown on the approved landscape plan must be designed to include adequate drainage provisions and permanent irrigation. Details shall be submitted with the Construction Certificate application.

Access, Mobility & Adaptable Housing

22. To provide suitable access for people with disabilities, the development shall comply with relevant access and mobility requirements of the Building Code of Australia. Details demonstrating compliance must be submitted with the Construction Certificate application.
23. A continuous and accessible path of travel, designed in accordance with Australian Standard 1428.1, shall be provided between the entrance to the premises and any disabled car parking space. Details demonstrating compliance must be submitted with the Construction Certificate.

BASIX Certificate

24. Where any conditions of this consent affect the commitments specified in the submitted BASIX Certificate, a revised BASIX Certificate is to be prepared to ensure energy efficiency targets are still achieved.

Fire Safety

25. To enable the issuing of a fire safety schedule, information required by clause 168(3) of the *Environmental Planning & Assessment Regulation 2000* must be submitted with the Construction Certificate application.

Long Service Levy

26. In accordance with Section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant shall pay a long service levy at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments

Corporation or Mosman Municipal Council for any work costing \$25,000 or more. To pay the levy online go to <https://levy.lspc.nsw.gov.au/>. To pay the levy in person at either the Long Service Payments Corporation or Mosman Municipal Council you will need to complete the Levy Payment Form available from Council or online at <https://levy.lspc.nsw.gov.au/>.

Security Deposit

27. A cash deposit or bank guarantee to the value of \$5,000 in favour of Council shall be provided for the making good of any damage caused to Council property and to ensure the satisfactory completion of any works required to be undertaken outside the property boundary. A request for a refund of unused funds (less an inspection fee) may be made following the completion of all works, both inside and outside the property boundary, and an inspection of the site by Council.

Section 94 Contribution

28. Pursuant to Section 94 of the Environmental Planning & Assessment Act 1979, a monetary contribution of \$455,986.48 towards the acquisition and embellishment of public open space shall be paid to Council. This condition is imposed under Mosman Council's *Section 94 Contributions Plan - Open Space*. The Plan may be inspected at Council's offices within the Civic Centre, Mosman Square, Mosman.

Note: Contribution rates will be indexed by use of the Consumer Price Index and the actual amount to be paid will be determined at the date of payment. You may contact Council on 9978 4000 prior to payment to confirm current figures.

29. A cash deposit or bank guarantee to the value of \$20,000 in favour of Council shall be provided for the completion of the retaining wall that supports Council's road / road embankment. A request for a refund of unused deposit or guarantee funds may be made following the submission of a Structural Engineer's certificate which certifies that the wall has been completed in accordance with approved Construction Certificate plans or where any variation has been made, that the wall will provide adequate structural support for Council's property.

Construction Traffic Management Plan

30. Prior to any works on the site including any demolition works the applicant is to submit a "Construction Vehicle and Pedestrian Plan of Management" (CVPPM) for the routing and control of construction vehicles accessing and exiting the site for approval of Council's Manager Assets & Services. No works, including demolition works, are to take place on the site until Council's Manager Assets & Services has approved the CVPPM in writing. The CVPPM is to be complied with at all times.

The Plan is to address, but not limited to:

- (a) the hours of operation, the employees' vehicles, holding areas for vehicles wanting to access the site and truck works;
- (b) provide a means of ensuring vehicular and pedestrian access to adjoining residents' properties & the nearby Fire Brigade Building for the duration of the works;
- (c) residents of neighbouring properties, as well as School Principals from nearby schools whose students use Civic Lane, Horsnell Lane & Field Way being advised of the construction activity. This notification is to include phone contact details of the Site Manager;

- (d) provision of safe and convenient passage for pedestrians within the adjacent streets / lanes;
- (e) provision of adequate signs guiding pedestrians and vehicles as per RTA Traffic Control at Work Sites Manual;
- (f) provision for night lighting, overhead protective structures, road barriers, traffic barriers, etc as required;
- (g) adequate measures to be provided for marshalling trucks and prevention from stopping on or blocking Spit Road, Military Road, Field Way, Horsnell Lane, Civic Lane, Clifford Street & Mandolong Road;
- (h) a plan view of the entire site and frontage roadways indicating:

- Dedicated construction site entrances and exits (plus other nominated positions), controlled by a certified traffic controllers, to safely manage pedestrians and construction related vehicles in the frontage roadways.
- All vehicles including construction vehicles to enter and leave the site in a forward direction
- The locations of proposed work zones in the frontage roadways.
- Location of any proposed crane and concrete pump and truck standing areas on and off the site. The location of concrete pump and concrete delivery trucks shall (and concrete delivery truck queuing extent) shall be provided on a plan to the satisfaction of Council.
- Dedicated unloading and loading points within the site for all construction vehicles, plant and deliveries.
- Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected.
- An on-site parking area for employees, tradespersons and construction vehicles unless Council agrees that certain vehicles may temporarily stand / park in an approved kerbside construction zones.

- (i) A Traffic Control Plan(s) for the site in accordance with the RTA publication "Traffic Control Worksite Manual" and prepared by a suitably qualified person (minimum 'red card' qualification). The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each stage.

Approval is to be obtained from Council for any temporary road closures or crane use from public property. Applications to Council shall be made a minimum of 4 weeks prior to the activity proposed being undertaken.

- (j) A detailed description and route map of the proposed route for vehicles involved in spoil removal, material delivery and machine floatage is to be provided and is to address the following:

- Light traffic roads and those subject to a load or height limit must be avoided where alternate routes exist.
- A copy of this route is to be made available to all contractors and shall be clearly depicted at a location within the site.
- The plan must provide a schedule of site inductions to be held on regular occasions and as determined necessary to ensure all new employees are aware of their construction

management obligations. These must specify that construction-related vehicles are to comply with the approved requirements.

The Construction Vehicle and Pedestrian Plan of Management including the Traffic Control Plans (TCP) shall be prepared by a suitably qualified and experienced traffic consultant (RED or ORANGE ticket) and be certified by this person as being in accordance with the requirements of the abovementioned documents and the requirements of this condition. The construction management measures contained in the approved plan shall be implemented in accordance with the plan prior to the commencement of, and during, works on-site including excavation.

The Construction Vehicle and Pedestrian Plan of Management is to be approved by Council prior to the issue of a Construction Certificate and the undertaking of any demolition, remediation or construction on the site. The Construction Traffic Management Plan shall be submitted to and adopted by Council's Traffic Committee.

Notes:

- (a) Council's Traffic Committee meets once every two months. To avoid delays in the commencement of works early lodgement is recommended;
- (b) An application fee of \$515 per site for Construction Traffic Management Plans applies. When assessment is required within 7 days, the required fee is \$1,550 per site; and
- (c) Fees will be indexed by use of the Consumer Price Index and the actual amount to be paid will be determined at the date of payment. You may contact Council on 9978-4000 prior to payment to confirm current figures.

Structural Certification

- 31. Certification shall be provided from a qualified practicing Structural Engineer with membership of the *Institute of Engineers Australia* or who is eligible to become a member and has appropriate experience and competence in the related field that the walls, floors, and top slab of the car parking structure of the existing building that are shown to be retained on the approved plans, can be retained, and that these components will withstand the proposed additional loads.

Pre-weathered Roofing

- 32. To minimise glare to the street and surrounding properties all copper/zinc roofing is to be pre-weathered. Details are to be included in the Construction Certificate application.

State Environmental Planning Policy No. 65—Design Quality of Residential Flat Development

- 33. A certifying authority must not issue a construction certificate for a residential flat development unless the certifying authority has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.
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BASIX Certificate

34. The applicant must include copies of any relevant BASIX certificates as part of the application for a Construction Certificate, and all items nominated in the subject BASIX certificate must be specified on the plans submitted with the application.

PRIOR TO THE COMMENCEMENT OF SITE WORKS

The following measures must be satisfied prior to the commencement of site works, including any works relating to demolition, excavation or vegetation removal.

Notice of Intent to Commence Site Works

35. In accordance with Section 81A(2) of the *Environmental Planning and Assessment Act 1979*, no site works (including building works, demolition, excavation or the removal of vegetation) are to commence until:
- (i) the Construction Certificate has been issued;
 - (ii) the person benefiting from the consent has appointed a Principal Certifying Authority (PCA);
 - (iii) in instances where Council is not the PCA, the PCA has, no later than 2 days before the building work commences, notified Council of his or her appointment and notified the person benefiting from the consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work;
 - (iv) the person benefiting from the consent, if not carrying out the work as an owner-builder, has:
 - appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved; and
 - notified the PCA of any such appointment; and
 - unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work; and
 - (v) the person benefiting from the consent has given Council at least 2 days' notice of the person's intention to commence the erection of the building.

Home Building Act

36. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- (a) in the case of work to be done by the holder of a contractor licence under that Act:
 - (i) the name and licence number of the contractor; and
 - (ii) the name of the insurer by whom the work is insured under Part 6 of that Act,
 - (b) in the case of work to be done by the holder of an owner-builder permit under that Act, the name and permit number of the owner-builder.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development

to which the work relates (not being the council) has given the council written notice of the updated information.

Construction Hoarding or Fencing

37. If site or building works will:

- cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient or unsafe; or
- have the potential to damage adjoining private land by way of falling objects;

then the site must be fenced throughout construction and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.

The hoarding/fence must be removed when the work has been completed.

Where construction requirements or site constraints necessitate the hoarding or fencing being located on Council land, a Footpath/Nature Strip/Roadway Occupation form is to be lodged with Council and all fees paid prior to the hoarding/fencing being erected (a copy of the form is available on Council's website).

Hoarding or fencing on Council land must maintain a minimum of 1500 clear footpath width at all times (lesser distances may be considered in exceptional circumstances).

Trunk Protection

38. To limit the potential for damage to trees to be retained, trunk protection measures must be installed for the following tree:

<u>Species</u>	<u>Location</u>
Chinese Elm (<i>Ulmus parvifolia</i>) street tree	on Military Rd frontage

Trunk protection shall comprise the placement of 2.0 metre lengths of 100mm x 50mm hardwood battens spaced at 150mm centres around the trunk and secured in place by metal strap bindings or 10 gauge fencing wire fixed at 300mm centres. Prior to placing battens, a soft protective padding must be installed to the ends of timbers to prevent damage to bark and conducting tissue. Trunk protection must remain in place for the duration of site works.

Sediment & Erosion Controls

39. Temporary sedimentation and erosion controls shall be constructed prior to commencement of any site works in order to prevent the discharge of sediment from the site. The controls shall be designed and installed in accordance with the requirements of the NSW Department of Environment and Conservation's *Managing Urban Stormwater: Soils and Construction Manual Volume 1, 4th Edition March 2004*. [Note: this document is now available from the Department of Planning]

Public Liability Insurance

40. Public liability insurance to the value of \$5,000,000 must be taken out by the builder or owner to protect any person, firm or company from injury, loss or damage sustained as a consequence of the carrying out of site works, including all excavation,

demolition and construction works. A copy of the policy must be provided to Council or the Accredited Certifier.

Noise During Construction

41. To ensure reasonable acoustic amenity for surrounding properties is maintained during construction of the building, certification from a qualified acoustic consultant must be submitted to Council prior to the Construction Certificate being issued verifying that the works will be conducted in accordance with the requirements of NSW Interim Construction Noise Guideline for building sites.

Noise Impact Statement

42. A Noise Impact Statement shall be prepared under the supervision of a certified Acoustic Consultant who will certify the content of the report which is to be submitted to Council for approval. The report shall contain but not be limited to the following matters:
- (a) the identification of sensitive noise receivers potentially impacted by the proposal;
 - (b) the quantification of the existing acoustic environment at the receiver locations (measurement techniques and assessment period should be fully justified and in accordance with the relevant Australian Standards and the NSW EPA requirements);
 - (c) details of any acoustic control measures that will be incorporated into the proposal;
 - (d) the formulation of suitable assessment criteria;
 - (e) the identification of all noise that is likely to emanate from items of plant and other movable equipment including gates roller doors security items and the subsequent prediction of resultant noise at the identified sensitive receiver locations from the operation of the premises; and
 - (f) a statement certifying that the development is capable of operating without causing a nuisance.

DURING SITE WORKS / CONSTRUCTION

The following conditions must be satisfied during site and construction works.

Compliance with the Building Code of Australia

43. All works are to be carried out in accordance with the requirements of the Building Code of Australia.

Partial Demolition

44. All demolition work must be carried out in accordance with the provisions of *Australian Standard 2601–2001: The Demolition of Structures*. Demolition is not to exceed that approved under this consent and as shown on approved plans. If for structural or other reasons additional demolition and then rebuilding works are found to be necessary, consent for such works is to be obtained from Council.
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Asbestos Material

45. Where asbestos material shall be removed or disturbed as a result of any proposed demolition, alteration or addition, all work must be carried out by a person licensed under Chapter 10 of the *Occupational Health and Safety Regulation 2001* and undertaken in accordance with the requirements of clause 29 of the *Protection of the Environment Operations (Waste) Regulation 1996*. All asbestos to be removed must be disposed of at a tip recommended by the NSW Environment Protection Authority and under no circumstances shall be re-used or sold.

Construction within Boundary

46. The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structure shall encroach onto the adjoining properties. Gates must be installed so they do not open onto the public way.

Signs for Building and Demolition Sites

47. A sign must be erected in a prominent position on any work site on which building work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work; and
 - (b) showing the name of the person in charge of the work and a telephone number at which that person may be contacted outside work hours; and
 - (c) stating that unauthorised entry to the work site is prohibited.

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

Where Council is the nominated PCA, these signs may be purchased from Council's offices for a fee of \$35.

This condition does not apply in relation to building work or demolition work that is carried out inside, and does not affect the external walls of, an existing building.

Site Work Hours

48. In order to maintain the amenity of adjoining properties, audible site works shall be restricted to between 7.00am and 6.00pm, Monday to Friday and 8.00am to 1.00pm Saturday. Inaudible site works may also take place between 7.00am and 8.00am on Saturdays. No site works shall be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials shall not be delivered to the site outside the approved hours of site works.

Protection of Public Places

49. The work site shall be kept lit between sunset and sunrise if it is likely to be a source of danger to persons using a public place or upon instruction by Council to enhance the safety and security of the area in which the work is located.

Construction Hoarding or Fencing

50. Any construction hoarding or fencing is to be maintained in good order throughout the life of the fence.
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Shoring and Adequacy of Adjoining Property

51. If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must at the person's own expense:
- (a) protect and support the adjoining premises from possible damage from the excavation, and
 - (b) where necessary, underpin the adjoining premises to prevent any such damage.
52. All excavations and backfilling shall be limited to that required in accordance with the approved plans only and must be executed safely and if necessary properly guarded in accordance with appropriate professional standards to prevent them from being dangerous to life or property. At least 7 days before excavating, give notice of an intention to excavate to the adjoining owner and furnish particulars to the owner of the proposed work.

Sediment & Erosion Controls

53. Sedimentation and erosion controls must be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.
54. All construction vehicles shall be washed prior to exiting the site to remove site material on the vehicle and prevent it from entering the stormwater system in the surrounding road network. All polluted water must be retained on site for sediment extraction before it is discharged in to the stormwater system.
55. All stormwater runoff must be intercepted and diverted from areas susceptible to erosion through temporary earth banks or other drainage methods. The diversion is not to direct waters onto adjoining properties.

Dust Control

56. Appropriate measures (e.g. fine water spray) shall be employed during demolition, excavation and construction works to prevent the emission of dust and other impurities into the surrounding environment. All such measures shall be co-ordinated with site sedimentation controls to ensure polluted waters do not leave the site.

Landfill

57. Any fill material imported to the site shall consist of virgin excavated natural material as defined by the *Protection of the Environment Operations Act 1997* or be covered by a Resource Recovery Exemption from the Department of Environment and Climate Change.

Council Property

58. The land and adjoining areas shall be kept in a clean and tidy condition at all times. No construction vehicles, building materials, waste, machinery or related matter shall be stored on the road or footpath for the duration of works unless separate approval has been obtained from Council's Traffic Committee for the establishment of a Construction Zone. Under no circumstances will any person be allowed to mix or dispose of concrete, mortar or slurry within Council property.
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59. The parking management system approved in the Construction Certificate is to be installed to the satisfaction of Council. All works associated with this are to be borne by the applicant.
60. Any works carried out to Council owned property or Infrastructure as a result of this consent are to be undertaken in accordance with Council specifications; i.e. *Specification For Concrete Kerb & Gutter, Footpaths, Vehicle and Kerb Crossings & Concrete Converters, Public Domain Improvement Program, Specification For Brick Paving, Specification For Stormwater Drainage Construction or Specification For Asphalt Pavement Construction.*

Construction Traffic Management Plan

61. All works and traffic movements must be carried out in accordance with the approved Construction Traffic Management Plan. A copy of the Plan must be kept on site at all times and made available to the PCA or Council officers on request.

Drainage

62. Stormwater shall be directed to the street gutter. All drainage works shall be constructed in accordance with Council's *Stormwater Management in Mosman.*

Utility Services

63. To reduce the extent of overhead cabling, all low voltage distribution and service mains to the development must be underground for the full length of the service both inside and outside the property boundary.

Car Parking

64. To ensure reasonable safety and manoeuvrability, all parking dimensions and access aisles must satisfy the requirements of Australian Standards 2890.1-2004 and Council's Transport Development Control Plan including, where applicable, dimensions for any disabled parking spaces.

NB: The Principal Certifying Authority may require a compliance certificate from a qualified architect, engineer or town planner certifying that this condition has been satisfied.

Council Property

65. All manuals and operating documentation regarding the parking management devices are to be supplied to Council. The system is to be certified as being installed as per the details supplied in the Construction Certificate by a suitably qualified person who has experience in this field.

Materials & Finishes

66. To minimise glare nuisance, the reflectivity index of the glass is not to be more than 20%.
67. External materials and colour finishes shall be in accordance with the sample submitted to Council with the development application.
68. Roofing materials must be of low glare and reflectivity.
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Protection of Landscape Features

69. All natural landscape features including trees and other vegetation, natural rock outcrops, soil and watercourses shall remain undisturbed except where affected by necessary works detailed on approved plans.

To minimise impacts upon trees to be retained, no permanent fill or storage of building materials, excavated fill or topsoil during site works shall take place within their driplines.

Tree Preservation

70. All street trees and trees on private property that are protected under Mosman Council's *Tree Preservation Order 2003*, shall be retained except where Council's prior written consent has been obtained, or where after approval of the relevant Construction Certificate, trees stand within the envelope of approved buildings or within the alignment of approved permanent paved vehicular access roads and parking areas.

Landscape Mulch

71. Mulches imported to the site must be derived from native species. Where native vegetation is removed as part of the development, it shall be mulched where possible and used in the final landscaping.

BASIX Certificate

72. To promote energy efficiency, the development is to be carried out in accordance with the commitments contained in the BASIX Certificate dated July 25, 2011.

Siting, Height and View Loss

73. To ensure that siting, height and view loss objectives are achieved, all wall locations, finished floor levels and ridge levels must be in accordance with that approved under this consent.

NB: The Principal Certifying Authority may require a compliance certificate from a registered surveyor prior to the pouring of a concrete floor or the fixing of roof cladding to verify compliance.

Acoustic

74. To ensure reasonable acoustic amenity for surrounding properties is maintained, all recommendations made in the acoustic report prepared by PKA Acoustic Consulting dated July 2011 accompanying the application which require specialised acoustic treatment of the building shall be complied with and maintained.

Air Conditioning Units

75. To control noise impacts for adjoining properties, no external air conditioning unit shall be installed without prior consent. Applicants may have regard to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

Air Handling and Water Systems

76. The installation and commissioning of air-handling and water systems shall be in accordance with the provisions of *AS/NZS 3666.1:2002 Air-handling and water*
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systems of buildings-Microbial Control-Design, installation and commissioning, except to the extent that the Public Health (Microbial Control) Regulation 2000 provides otherwise.

Lighting

77. To maintain amenity for adjoining properties, all external lighting installed shall comply with *Australian Standard 4282-1997 'Control of the obtrusive effects of outdoor lighting'*.

Site Facilities

78. The following facilities must be provided on the site:
- (a) toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
 - (b) a garbage receptacle for food scraps and papers, with a tight fitting lid.

Waste Storage Area

79. To improve environmental sustainability the waste storage area shall make provision for dry recycling systems and services. For safety, amenity and maintenance reasons, the waste storage area must be constructed to the following standards:
- Floors must be constructed of concrete, graded and drained to an approved drainage outlet connected to the sewer and finished to a smooth even trowelled surface;
 - Walls must be constructed with solid impervious material and shall be cement rendered internally to a smooth even steel trowelled surface;
 - All intersections between the walls and floors shall be coved with coving having a minimum radius of 25mm;
 - All entry points into the room must be bunded to prevent the escape of liquid waste. Bunding shall be for 110% of the likely liquid storage waste and constructed in such a manner that does not obstruct the removal of waste receptacles from the room or create a safety risk to users;
 - Adequate ventilation shall be provided;
 - Adequate lighting shall be provided;
 - The ceiling must have a minimum height of 2.1m from floor level and be finished with a smooth faced non-absorbent material capable of being easily cleaned;
 - Waste storage areas shall prevent the access of vermin;
 - Waste receptacles used shall be compatible with Mosman Council's waste collection service;
 - The door to the storage area shall be weatherproof and shall be openable from the inside at all times;
 - Hot and cold water hose cocks shall be located inside or within close proximity to the waste storage areas to facilitate cleaning.
80. The development must incorporate separate waste/recycling storage rooms/areas for the residential and non-residential components. Commercial tenants must be prevented (via signage and other means), from using the residential waste/recycling bins and vice versa.
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Waste Management

81. Building materials shall be re-used, recycled or disposed of in accordance with the Waste Management Plan submitted with the application.

Local Government Act 1993

82. This consent does not authorise the carrying out of any of the following activities which require the separate approval of Council under Section 68 of the *Local Government Act 1993*:

- Place a waste storage container in a public place
- Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway

Note: A person who fails to obtain an approval or who carries out an activity otherwise than in accordance with an approval is guilty of an offence under Sections 626 and 627 of the *Local Government Act 1993*.

Time Limit

83. To minimise the duration of site disturbance and amenity impacts for surrounding properties, all site works must be completed within 5 years of the physical commencement of work.

Approved Plans

84. A copy of the stamped approved plans must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council.

Critical Stage Inspections

85. To ensure building works are carried out properly and in accordance with the conditions of this consent, with the Building Code of Australia and/or with relevant Australian Standards, the following critical stage inspections are to be carried out:
- after the commencement of the excavation for, and before the placement of, the first footing
 - prior to covering of waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within a building, and
 - prior to covering any stormwater drainage connections, and
 - after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
 - prior to covering any stormwater drainage connections, and
 - after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

The critical stage inspections must be carried out by the Principal Certifying Authority (PCA), or if the PCA agrees, by another certifying authority excepting the final inspection which must be carried out by the PCA.

Notes: Records of the above critical stage inspections will be required to be submitted prior to the release of the Occupation Certificate – see later conditions of consent.

If you intend engaging Council to undertake the inspections, please telephone the area Building Surveyor to arrange a suitable time.

Driveway

86. The levels at the boundary alignment of the property along the Horsnell Lane frontage shall be defined by the existing levels.

PRIOR TO THE RELEASE OF THE OCCUPATION CERTIFICATE

The following conditions must be satisfied prior to the issue of the Occupation Certificate.

Record of Inspections Carried Out

87. In accordance with clause 162B of the *Environmental Planning and Assessment Regulation 2000*, the certifying authority responsible for the critical stage inspections must make a record of each inspection as soon as practicable after it has been carried out. Where Council is not the PCA, the PCA is to forward a copy of all records to Council.

The record must include details of:

- The development application and construction certificate number;
- The address of the property at which the inspection was carried out;
- The type of inspection;
- The date on which it was carried out;
- The name and accreditation number of the certifying authority by whom the inspection was carried out; and
- Whether or not the inspection was satisfactory in the opinion of the certifying authority who carried it out.

Car Parking

88. Residential parking spaces must be line marked and allocated to units in accordance with the requirements of Council's Transport Development Control Plan.
89. All public parking spaces (48 off) shall be managed by Council in accordance with other conditions of this consent.
90. To satisfy user demand, a minimum of 88 car spaces shall be provided on site. Of these spaces, 40 shall be resident spaces, 9 shall be resident visitor spaces and shall also be utilised as public carparking spaces, and 39 shall be shop/public carparking spaces.

BASIX Completion Receipt

91. Before issuing a final occupation certificate for a building or for part of a building, the certifying authority must apply to the Director-General for a BASIX completion receipt with respect to that building or part, in accordance with Clause 154C of the *Environmental Planning and Assessment Regulation 2000*.

Carwash

92. The carwash space shall be graded to an internal drainage point, connected to a Sydney Water Sewer and have access to a water supply. When not in use for car washing, the space may be used for visitor parking. The carwash bay shall not be used for engine degreasing or mechanical repairs and must be signposted accordingly.
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Bicycle Parking

93. To encourage and promote the use of sustainable transport modes, secure bicycle parking/storage must be provided to accommodate not less than 9 bicycles. The facility must be provided in a suitable location which allows safe and easy access and should be designed and installed in accordance with AS 2890.3-2004 – *Parking Facilities – Bicycle Parking Facilities*.

Council Property

94. Upon the completion of the retaining wall supporting Council's road or road reserve and prior to further works progressing or the release of the Occupation Certificate, a work as executed plan must be provided to Council together with a Structural Engineer's certificate that states the Structural Engineer has inspected the work during the course of construction and that such work complies with the design and specification submitted to an approved with the Construction Certificate application, or where any difference exists, details shall be highlighted and certified as being structurally sound and consistent with the minimum design loads required under this consent.

On-Site Detention/Rainwater Re-use System

95. So as Council has accurate records of the stormwater system to aid with catchment management functions, work-as-executed details of the on-site detention system or rainwater re-use tanks prepared by a Civil Engineer with membership of the Institute of Engineers Australia or who is eligible to become a member and has appropriate experience and competence in the related field, demonstrating that the required storage and discharge volumes have been constructed in accordance with the design requirements and Council's *Policy for Stormwater Management in Mosman* are to be provided to Council. The details must show the invert levels of the on-site detention system or rainwater re-use tanks as well as the pipe sizes and grades. Any variations to approved plans must be shown in red and supported by calculations.
96. To ensure that future owners are made aware of their responsibilities with respect to the on-site detention system or rainwater re use tanks, a positive covenant shall be created on the title of the allotment requiring that the owner(s) maintain and keep in working order the on-site detention system or rainwater re use tanks, unless otherwise approved in writing by Mosman Council.

A fee of \$120.00 applies (GST-inclusive) for the checking, approval and execution of the Positive Covenant by Council and must accompany the Positive Covenant when lodged with Council.

The terms of the positive covenant shall read:

- (i) In this Positive Covenant "detention system or rainwater re-use system" shall mean the detention system or rainwater re-use system approved by Mosman Council pursuant to Development Consent No. 8.2011.232.1 or any modification thereof approved by Mosman Council in writing.
 - (ii) The Registered Proprietors will at their own expense well and sufficiently maintain and keep in good and substantial repair and working order any detention system/rainwater re-use system which exists from time to time on the land.
 - (iii) The Registered Proprietors shall not remove the detention system/rainwater re-use system without the prior consent of Mosman Council.
 - (iv) The Registered Proprietors hereby agree to indemnify Mosman Council from and against all claims, demands, actions, suits, causes of action, sum or sums
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of money, compensation damages, costs and expenses which Mosman Council or any other person may suffer or incur as a result of any malfunction or non-operation of any such detention system/rain water re-use system arising from any failure of the Registered Proprietors to comply with the terms of this Covenant.

- (v) The term “Registered Proprietors” shall include the Registered Proprietors of the land from time to time and all their heirs, executors, assigns and successors in title to the land and where there are two or more registered proprietors of the land the terms of this covenant shall bind all those registered proprietors jointly and severally.

Sydney Water

97. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorized Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the website www.sydneywater.com.au then refer to “Water Servicing Coordinator” under “Developing Your Land” or telephone 13 20 92 for assistance.

Following application, a “Notice of Requirements” will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate or Subdivision Certificate as applicable or whichever may occur first.

A copy of any Trade Waste Agreement required by Sydney Water shall be submitted to Council prior to the release of the Occupation Certificate.

State Environmental Planning Policy No. 65—Design Quality of Residential Flat Development

98. A certifying authority must not issue an occupation certificate to authorise a person to commence occupation or use of a residential flat development unless the certifying authority has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that the residential flat development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No. 65—Design Quality of Residential Development*.

Fire Safety

99. A final fire safety certificate prepared in accordance with Part 9 Division 4 of the *Environmental Planning & Assessment Regulation 2000* must be issued by or on behalf of the owner. Copies of both the final fire safety certificate and the fire safety schedule must be (1) supplied to Council, (2) forwarded to the Fire Commissioner and (3) prominently displayed in the building.

Tree Replacement Due to Cabling

100. In the event that existing trees are lost as a result of trenching related to undergrounding of cables, a suitable replacement or replacements must be installed in keeping with Council's *Street Tree Master Plan*.

Consolidation

101. All allotments involved in this proposal must be consolidated into one allotment prior to the issue of the Occupation Certificate.
102. A copy of the Commercial Waste Removal and Recycling Removal agreement shall be submitted to Council prior to the issue of an Occupation Certificate.
103. The operation of mechanical plant or other plan items must be certified by a suitably qualified person as to achieving the criteria stated in the noise criteria conditions of consent.

PRIOR TO OCCUPATION

The following condition must be satisfied prior to occupation of the development.

Compliance Certificates and Inspection Records

104. Where Council is not the Principal Certifying Authority, a copy of any compliance certificates received by the PCA shall be forwarded to Council prior to occupation or commencement of the use.

Occupation Certificate

105. Occupation or use, either in part or full, shall not take place until an Occupation Certificate has been issued. The Occupation Certificate must not be issued unless the building is suitable for occupation or use in accordance with its classification under the *Building Code of Australia* and until all preceding conditions of this consent have been complied with.

Where Council is not the Principal Certifying Authority, a copy of the Occupation Certificate together with registration fee must be provided to Council.

Occupation

106. The premises shall be occupied solely for the approved use. No change of use or additional use of any part of the premises shall take place without prior development consent (other than for exempt development).

Shopfront Appearance

107. To preserve the streetscape, roller shutters are not to be placed over the entrance to the premises.

Delivery and Waste Removal Hours

108. Deliveries of goods or services and the collection of any waste (excepting emergency services) shall not take place between 10.00pm and 7.00am on any day. An emergency service for the purpose of this condition means the delivery of any goods or services required for the maintenance of safe operating conditions upon the site.

Car Parking

109. Parking and manoeuvring areas shall be used solely for such purposes.
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Acoustic

110. To ensure reasonable acoustic amenity for surrounding properties is maintained, all recommendations made in the acoustic report prepared by AKP Acoustic Consulting dated July 2011 accompanying the application which requires specialised acoustic treatment in which the use must operate shall be complied with.

Advertising Signs

111. No advertisement shall be erected on or in conjunction with the development without prior development consent unless the advertisement is 'exempt development' under Council's *Exempt and Complying Development DCP*.

Air Handling and Water Systems

112. The operation and maintenance of air-handling and water systems shall be in accordance with the provisions of AS/NZS 3666.2:2002 '*Air-handling and Water systems of buildings-Microbial Control- Operation and Maintenance*', except to the extent that the *Public Health (Microbial Control) Regulation 2000* provides otherwise.

Local Government Act 1993

113. This consent does not authorise the exposure (whether for sale or otherwise) of any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road or the hanging of an article beneath an awning over the road. Separate approval from Council for such activity is required under Section 68 of the Local Government Act 1993.

Note: A person who fails to obtain an approval or who carries out an activity otherwise than in accordance with an approval is guilty of an offence under Sections 626 and 627 of the Local Government Act 1993.

Waste Management

114. Waste contractors shall move the bins to the street and then return them to the bin storage area to minimise the extent of time the bins are on the road.
115. Commercial tenants must be prevented (via signage, door locks and any other necessary means) from using the residential waste/recycling bin room and vice versa.

Use of Basement of Car Park For Public Car Parking

116. Basement levels 1, 2, 3, 4 and 5, excluding the forty-two (40) resident car spaces, as shown on Drawings DA09A- to DA11A inclusive dated December 2011 prepared by Nettleton Tribe Architects ("the carpark"), shall be controlled and managed as follows:
- The registered proprietor of the property shall grant Council and its authorised servants and agents a licence to enter upon the carpark for the purpose of implementing the terms of this consent ("the licence").
 - Council shall be permitted to erect appropriate signage, police the use of the carpark as a free carpark and ensure the right of ingress to and egress from the carpark for all members of the public.
 - The licence:
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- (i) shall be personal and exclusive to Council and not be capable of assignment or transfer.
 - (ii) confer on Council the exclusive control and management of the carpark and the means of access thereto and exits there from at all times.
 - d. Council shall not be required by the registered proprietor of the property to pay a licence fee during the continuance of the licence. The licence shall not be terminated without the consent of Council.
 - e. The Council shall be permitted to employ such staff as may be reasonably necessary for the proper policing of the carpark in accordance with any resolution of Council regulating the use thereof by the public for the accommodation of vehicles.
 - f. Council shall not make or permit to be made, without the consent of the registered proprietor, any structural alterations or additions to the car park excepting the erection of devices necessary for parking control.
 - g. The registered proprietor, at its own expense, shall mark by means of painted lines or stud pads or plates to the satisfaction of Council's Director of Environment and Planning, parking spaces in which a vehicle may stand or wait in the car park and to keep and maintain the marking of such spaces at all times.
 - h. The registered proprietor shall pay or otherwise discharge all liability for Council rates, water rates, gas, electric power and light in respect of the carpark.
 - i. The registered proprietor shall, at all times during the term of the licence, keep effected a public risk insurance policy in the names of Council and the registered proprietor in respect of the carpark and all improvements thereon in such sum as Council may require but not less than \$10 million. The registered proprietor shall produce a copy of the policy prior to the issue of an Occupation Certificate and to produce the policy, and evidence of its currency, to Council at any time Council may reasonably require.
 - j. The registered proprietor shall maintain the carpark, including the provision and repair of mechanical ventilation and keep clean the carpark.
 - k. The registered proprietor shall permit Council to, by notice exhibited in the carpark or by other such means as it considers appropriate, fix the maximum period or periods for which a vehicle may stand or wait in the carpark or any portion thereof provided that the limit on free parking in the parking area shall not be less than 3 hours during the hours of 9.00am and 5.00pm daily.
 - l. The registered proprietor shall use all reasonable endeavours to ensure that staff and servants of the registered proprietor comply with Council's requirements relating to the use of the carpark.
 - m. The registered proprietor shall, in the event of mortgaging, selling, conveyancing, transferring or otherwise alienating its interest in the carpark or any part thereof, secure from the mortgagee, purchaser, conveyee, transferee or alienee, a deed of covenant with and in favour of Council whereby such
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party covenants with the Council to observe and perform these conditions of consent.

- n. Council shall have the right to have registered on the title of the property, pursuant to s.88B of the Conveyancing Act, 1919 a Restriction as to User which shall provide that the carpark shall not be used otherwise than as a free carpark.
- o. All opening and closing of the carpark must be the responsibility of the building owners.

DURING OCCUPATION

The proposal is satisfactory to this Environment Services Section conditional upon compliance being given to the following conditions:-

117. The use of the premises shall not give rise to:

- (a) Transmission of 'offensive noise' to any place of different occupancy, and,
- (b) A sound pressure level at affected premises that exceeds the background (LA90) noise level in the absence of the noise consideration by more than 5dBA. The source noise level shall be assessed as an Leq, 15 min and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content, and,
- (c) A sound pressure level at any affected premises that exceeds the recommended planning levels outlined in the NSW, EPA Industrial Noise Policy.

118. Noise associated with mechanical plant must not give rise to any one or more of the following:

- (a) Transmission of vibration to any place of different occupancy greater than specified in AS 2670.
- (b) An indoor sound pressure level in any place of different occupancy (and/or public place) greater than 3dB above the L90 background level or greater than 5dB at the boundary of any affected property in any octave band from 31.5 Hz to 8,000 Hz centre frequencies inclusive between the hours of 7.00 a.m. to 10.00 p.m. daily and 0dB above the L90 background between 10.00 p.m. and 7.00 a.m. the following morning. However, when the L90 background levels in frequencies below 63 Hz are equal to or below the threshold of hearing, as specified by the equal loudness contours for octave bands of noise, this subclause does not apply to any such frequencies.
- (c) The emission of an "offensive noise" as defined under the Protection of the Environment (Operations) Act 1997.

The method of measurement of vibration in (a) and sound levels in (b), (c) must be carried out in accordance with AS 2973 for vibration measurements, AS 1055 for outdoor sound level measurements, and AS 2107 for indoor sound level measurements.

Ventilation

119. The premises shall be ventilated in accordance with the requirements of the Building Code of Australia (If using deemed to satisfy provisions: AS1668, Parts 1 & 2).

Restriction on Delivery Vehicle Size

120. Delivery vehicles to the site must be restricted to rigid vehicles with a maximum size no greater than 6.5 metres in length. This is to ensure that only vehicles suitable for the local street network and size of the delivery bay on site are used.

Street Numbering

121. The premises shall be identified by street numbering. Street numbering for the property shall be 708-728 Military Road.

ADVICE / NOTES

The following points are issued as advice to the applicant. They do not form conditions of the Notice of Determination.

- (i) Headings such as “Prior To The Release Of The Construction Certificate” together with bolded notes that immediately follow, form part of this Notice of Determination. Conditions under the respective headings shall be read in the context of the heading and note.
 - (ii) Section 82A of the Act provides for an applicant to request Council to review its determination except applications made on behalf of the Crown or applications in respect of designated development, integrated development or a complying development certificate. The request for review must be made within 6 months of the date of determination. A decision on a review may not be further reviewed under section 82A.
 - (iii) If you are unsatisfied with this determination, Section 97 of the Act gives you the right of appeal to the Land and Environment Court within 12 months of the determination date.
 - (iv) The applicant shall consult with relevant public utility providers and meet any costs imposed by those providers for alterations to mains or services required as a consequence of this approval.
 - (v) This consent incorporates general terms of approval from RTA.
 - (vi) Other public authorities may have separate requirements and should be consulted in the following respects:
 - *Australia Post* for the positioning and dimensions of mail boxes in new commercial and residential developments;
 - *AGL Sydney Limited* for any change or alteration to gas line infrastructure;
 - *Ausgrid* for any change or alteration to electricity infrastructure or encroachment within transmission line easements;
 - *Telstra, Optus* or other telecommunication carriers for access to their telecommunications infrastructure.
 - (vii) This decision does not ensure compliance with the Commonwealth *Disability Discrimination Act 1992*. Applicants may wish to investigate their potential for liability under that Act.
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- (viii) Failure to comply with the relevant provisions of the Act and/or the conditions of this consent may result in the serving of penalty notices or legal action through the Land and Environment Court.
- (ix) In accordance with section 81A of the Act, the person benefiting from this consent is notified that if Council is engaged as the Principal Certifying Authority, critical stage inspections to be carried out will include those listed under the sub-heading "Critical Stage Inspections" in this consent. If additional inspections are required, further notice will be provided.
- (x) All references to "the Act" under this consent relate to the Environmental Planning and Assessment Act 1979.
- (xi) When private certifiers are registering Part 4A Certificates with Council, it is requested that plans be lodged in PDF format.
- (xii) Following the issue of the Occupation Certificate an inspection fee of \$145.00 (per inspection) is to be paid at the Cashier's desk at the Civic Centre to ledger number 1040202.2997.028 in order to release the footpath security deposit.

Note: Fees will be indexed by use of the Consumer Price Index and the actual amount to be paid will be determined at the date of payment. You may contact Council on 9978-4000 prior to payment to confirm current figures.

- (xiii) Sydney Water have specific requirements for the design of residential vehicle wash bays. The vehicle wash bay shall be designed in accordance with these requirements. Contact Sydney Water at www.sydneywater.com.au for further detail.
 - (xiv) Dial Before You Dig is a free referral service for information on underground pipes and cables anywhere in Australia. Using Dial Before You Dig can prevent damage, disruption, injury and even death. Lodge your enquiry online at <http://www.1100.com.au/default.aspx> or call 1100 during business hours.
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