

JRPP NO. 2011SYE120
 DA Number 2011/575
 Street Address 73 & 77 Albert Ave, Chatswood

Table 1 - Applicant's response to conditions of consent

Condition	Comments	Requested amendments (new words are shown in red and deleted word in strikethrough)
Schedule 2 – Conditions of Consent		
22. Damage Deposit	This condition requires the payment of a damage deposit of \$120,000. This condition is unreasonable as: - It imposes a burden on the applicant that is disproportionate to the potential for damage - The damage deposit amount is considered excessive given that that the adjoining Thomas Street car park site (with a CIV of \$147 million, much longer construction period and greater street frontages) was required to pay a damage deposit of just \$135,000.	22. Damage Deposit The applicant shall lodge a Damage Deposit of \$120,000 \$60,000 (GST Exempt) as cash, cheque or an unconditional bank guarantee, to Council against possible damage to Council's asset during the course of the building works...
27. Traffic Management Plan	This condition should clearly state that it relates to a <u>Construction</u> Traffic Management Plan.	27. Construction Traffic Management Plan A detailed Construction Traffic Management Plan shall be prepared for pedestrian and traffic management and be submitted to the relevant road authority for approval. The plan shall:
28. Design of Works in Public Road (Roads Act Approval)	This condition requires the applicant to design the following works in public road (and conditions 77,78 &79 require the applicant to construct the works): a. Construction of 1.5m footpath along the site frontage to Albert Avenue b. Construction of new kerb and gutter for full frontage of the site in Albert Avenue with half road pavement renewal c. Reconstruction of the existing kerb inlet within the frontage of the site in Albert Avenue d. Construction of new kerb and gutter for full frontage of site in	28. Design of Works in Public Road (Roads Act Approval) Prior to issue of any Construction Certificate, the Applicant must submit, for approval by Council and the relevant the road authority, if not Council, full design engineering plans and specifications prepared by a suitably qualified and experienced civil engineer for the following infrastructure works: a. Construction of 1.5 metres footpath (max. 2.5% crossfall) for the full frontage of the site in Albert Avenue. All Adjustments to public utility services and associated construction works in the

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	Fleet Lane	<i>nature strip are to be at the full cost to the applicant. Detailed long section and cross sections at 5 metres interval shall be provided.</i>
	e. Construction of new kerb inlet within the frontage in Fleet Lane	
	f. Construction of new kerb inlet within the frontage in Thomas Lane	
	The requirement to complete these works was not raised by Council officers during the assessment period and numerous meetings.	<i>b. Construction of new kerb and gutter for the full frontage of the development site in Albert Avenue with half road restoration. Detailed long sections and cross section at 5m interval shall be provided.</i>
	Parts d and f are accepted as standard conditions subject to amendments to reflect practical circumstances.	<i>c. The reconstruction of the existing kerb inlet pit with a 2.4m lintel within the frontage of the site in Albert Avenue to suit the new designed alignment of the kerb and gutter. All details shall comply with Council's AUS-SPEC.</i>
	As detailed below, the other works listed in condition 28 are not a consequence attributable to the proposed development:	
	- Parts a, b and c are unreasonable and onerous as the footpath, kerb/gutter and road pavement along Albert Avenue are in good condition. Furthermore, the development does not provide student or staff car parking (2 spaces only are proposed) and will significantly reduce the site's traffic generation.	<i>d. Construction of new kerb and gutter a new concrete dish drain for the full frontage of the development site in Fleet Lane to follow existing levels. Detailed long sections and cross section at 5m interval shall be provided.</i>
	- Part e is not applicable as the drainage to the frontage of the site in Fleet Lane will be provided by a new concrete dish drain and extension of 375mm reinforced concrete pipe from existing kerb inlet pit in Thomas Street relates to another project.	<i>e. Construction of a new kerb inlet pit with a 2.4m lintel within the frontage of the site in Fleet Lane and the extension of 375mm reinforced concrete pipe (RCP) from the existing kerb inlet pit in Thomas Street. All details shall comply with Council's AUSSPEC and AS3725.</i>
	- Any damage to Council infrastructure incurred during the construction period would be repaired and covered by the damage bond referred to in condition 22.	<i>f. Construction of a new kerb inlet pit with a 2.4m lintel within the frontage of the site in Thomas Lane and the extension of 375mm reinforced concrete pipe (RCP) from the existing kerb inlet pit in Thomas Lane. All details shall comply with Council's AUSSPEC and AS3725</i>
	Given this, condition 28 should be reworded as shown in column III.	
	In the absence of these changes, condition 28 requires works for an improper purpose and is manifestly unreasonable: see <i>Newbury District Council v Secretary of State for the Environment</i> [1981] AC 578; <i>Planning Commission (WA) v Temwood Holdings Pty Ltd</i> [2004] HCA 63; (2004) 221 CLR 30; <i>Botany Bay CC v Saab Corp.</i> [2011] NSWCA 308.	

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32. Construction Certificate Required	The applicant is concerned that the note before condition 32 does not clearly articulate that a construction certificate is not required for demolition work. It is important that demolition be allowed to proceed prior to construction certificate (as contemplated in condition 41). The suggested amended will ensure that the consent is consistent with Land and Environment Court decisions that have held that where a building is to be demolished as a prelude to the construction of a new building, a construction certificate is not required for the demolition work: see <i>Sharp v Hunters Hill Council</i> (2002) 120 LGERA 155 @ pars.59-62 per Bignold J).	The following conditions of consent have been imposed to ensure that the administration and amenities relating to the proposed development comply with all relevant requirements. All of these conditions are to be complied with prior to the commencement of any works on site, including demolition. 32. Construction Certificate Required This consent IS NOT an approval to carry out any building works (with the exception of demolition work). A Construction Certificate is required PRIOR TO ANY BUILDING WORKS BEING COMMENCED.
47. Design Works in Thomas Lane and Fleet Lane	During the DA assessment, it was agreed with Council officers that the applicant would accept a condition of consent requiring certain works in Fleet Lane to implement the Shared Zone recommendations in the GTA Report dated 27/9/10. The GTA recommendation refers to signage and road markings, NOT reconstruction of Fleet Lane as required by condition 47.	47. Design Works in Thomas Lane and Fleet Lane Submit, for approval by Council and/or the relevant Road Authority through the Willoughby Local Traffic Committee prior to commencement of any of the following works. Detailed plans prepared by a qualified and experienced civil engineer for the following infrastructure works as required by this development consent and the Voluntary Planning Agreement related to this development consent: 1. The reconstruction of Thomas Lane (in accordance with requirements of the Voluntary Planning Agreement) and signage and line marking in reconstruction of Fleet Lane to introduce as a 10km/h Shared Zone, noting that final approval of the Shared Zone and the introduction of a 10km/h speed limit will be by the RMS. The plans to include details of all signage and line-marking adjustments. 2. The provision of a drop off/pick-up area and associated signage in associationed with the Thomas Lane Embellishment works contained in the Voluntary Planning Agreement associated with this development consent. 3. Details of all signage changes for the reconstruction of the path

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		on the west side of Thomas Lane as a Shared Bicycle and Pedestrian Path. 4. Any other regulatory signs along the street frontages of the site.
57. Green Travel Plan	The applicant has advised that is it impractical and unnecessary to have the Green Travel Plan “available in communal living areas throughout the approved development”. In any event, the applicant will issue all employees and occupants with a copy of the plan as part of induction process and will keep a copy of the Travel Plan at Reception. Subclauses (g) and (i) should also be deleted as they are not relevant to this project given the absence of on-site car parking.	57. Green Travel Plan A detailed Green Travel Plan incorporating the following (but not limited to) be prepared and submitted to the PCA for approval, and freely distributed to any employees and occupants of the approved development, and available in communal living areas throughout the approved development. - Transport access guide (TAG) in accordance with Roads and Traffic Authority’s current practice and guidelines. - Actions to promote the use of public transport - Bicycle route plans with the Willoughby Local Government Area and between the development and any major destination, including Macquarie University, St Leonards, North Sydney and the City of Sydney. - Availability and requirements of current Car Share Scheme in the City of Willoughby - Details on any discount offer to employee and occupants for public transport costs. - Details on any allowances, loans and insurance for bicycles together with bicycle storage and showering and changing facilities. Adopt a car pool scheme for work-related journeys. - Use taxis and public transport for work related journeys. Provide priority parking for staff who car pool with more than 2 passengers.

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63. Overhead services	Condition 63 requires the applicant to underground all adjoining overhead electricity supply and other overhead services. This condition is unreasonable for the following reasons: - There is no specific requirement in the DCP to underground the cables - The DA does not contain any commitment to the undergrounding of cables - The undergrounding of cables is not a 'consequence attributable to the development'.	63. Overhead services <i>All existing and proposed overhead electricity supply mains and other overhead services around the street frontages of the site, including laneways shall be relocated underground to the specification of the relevant utility provider and Willoughby City Council at full cost to the applicant.</i> <i>(Reason: Public amenity)</i>
67. Operation Plan	Under the heading Suggestion/Complaint Handling Procedures, condition 67 requires the applicant to display a contact number near the front entry of the site for public comments and submissions. This is an unreasonable requirement as there will be an on-site manager 24/7 who could be contacted directly (or after hours by intercom) by any person wishing to make a 'complaint or submission'.	67. Operation Plan ... <u>Suggestion/Compliant Handling procedures</u> • A register must be kept of any complaints or submission to the operator of the development together with record of actions in response to any complaints. • A contact number must be clearly display near the front entry of the site for public comments and submissions...
77. Construction of Kerb & Gutter	As set out above at condition 28, it is unreasonable to require the applicant to construct a new kerb and gutter along Fleet Lane and new kerb, gutter and half pavement width in Albert Avenue.	77. Construction of Kerb & Gutter <i>Construct new kerb and gutter together with any necessary associated pavement restoration in accordance with Council's specification for the full frontage of the development site in Fleet Lane and Albert Avenue with associated half road pavement reconstruction.</i> <i>(Reason: Public amenity)</i>
78. Reconstruct Pavement	As set out above at condition 28, it is unreasonable to require the applicant to reconstruct half the road pavement to Albert Avenue.	78. Reconstruct Pavement <i>Half the road pavement including any necessary associated works adjoining to the full frontage of the development site in Albert</i>

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		Avenue shall be reconstructed in accordance with Council's approved drawings, conditions and specification (AUSSPEC). Council's standard design traffic for this pavement is 2 x 106 ESA. (Reason: Ensure compliance)
83. Performance Bond	Condition 83 requires the payment of a \$60,000 performance bond for a term of 24 months. This condition is unreasonable as: - It imposes a burden on the applicant that is disproportionate to the potential for damage - Section 80A(6)(c) limits the period to 6 months.	83. Performance Bond The Applicant shall lodge with the Council a performance bond of \$60,000 \$30,000 against defective public civil works undertaken by the main Contractor for a period of twenty-four (24) six (6) months from the date of the completion certificate issued by Council as the road authority under the Roads Act 1993. The bond shall be lodged in the form of a cash deposit, cheque or unconditional bank guarantee which will be refundable subject to the approval of Council's Engineers at the end of the maintenance period. In this period, the Applicant is liable for any part of the work which fails to achieve the design specifications. Council shall be given full authority to make use of the bond for such restoration works within the maintenance period as deemed necessary. (Reason: Ensure compliance and specification)

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Table 2 - Applicant's response to Willoughby Council's submission

Council submission	Applicant's response
1. <i>That space be provided to accommodate 160 bicycles so that the number of personal mobility devices remains as required by the standard.</i>	The plans already show secure parking for 80 bicycles (consistent with the SEPP (AHR) requirement to provide 79 spaces). This equates to 1 space per 5 rooms. Given the site's location adjoining a transport interchange and the preference of many students to share bicycles, additional bicycle parking will not be utilised and will represent a waste of space and expenditure. Even though the provision of 80 spaces for bicycles is considered more than adequate, Iglu is willing to accept a condition requiring the provision of 5 shared/Iglu provided bicycles to encourage and support bicycle travel by students that do not own a bicycle.
2. <i>That the health and social amenity of the facility be enhanced by provision of a fitness room containing exercise machines.</i>	Students have access to excellent sports and training facilities at their education institutions eg Macquarie University sport and aquatic centre. A gym at Iglu Chatswood is likely to be under-utilised and the provision of popular facilities such as media rooms, computer rooms and social spaces is likely to be preferred by students. Notwithstanding, sporting activities such as running clubs and touch football will be organised by Iglu as part of its student community events program.
3. <i>The submission to the JRPP request that a condition be included requiring the applicant to set aside an area of the Landscape Garden for a food garden to be operated and maintained by the student residents. The Landscape Plan is to be amended to show the location of the food garden and the landscape works are to provide the conditions to enable the garden to be established.</i>	Accepted
4. <i>That the consent include a requirement that the management of the premises make provision for rooms for aboriginal students.</i>	Indigenous students will be welcomed, but specific rooms will not be set aside as this would compromise a cohesive student community. Iglu is committed to social equity and works closely with universities to assist students (including Indigenous students) facing financial hardship. Iglu's operations staff receive training regarding cultural and indigenous issues.