



Land and Environment Court New South Wales

Case Name: ADM Projects (Australia) Pty Ltd t/as ADM Architects
v Wollongong City Council

Medium Neutral Citation: **[2018] NSWLEC 1541**

Hearing Date(s): 20 September 2018

Date of Orders: 17 October 2018

Date of Decision: 17 October 2018

Jurisdiction: Class 1

Before: Dickson C

Decision: By consent, the Court orders that:

- (1) No order as to costs;
- (2) The request to vary the development standard in cl 8.6: "Building Separation within B3 Commercial Core" of the Wollongong Local Environmental Plan 2009 is upheld;
- (3) The appeal be upheld;
- (4) Development consent be granted to Development Application No. 2017/493 (as amended) for an eleven-storey commercial building, comprising ground floor retail uses and ten storeys of office space above, including three levels of basement parking on the land at 95-109 Crown Street, Wollongong, subject to the conditions set out in Annexure A;
- (5) The exhibits are returned with the exception of Exhibits A, 3 and 4.

Catchwords: DEVELOPMENT APPLICATION: partial demolition of existing building and the construction of new commercial building – consent orders – variation to Building Separation Standard - public objections.

Legislation Cited: Environmental Planning and Assessment Act 1979
Land and Environment Court Act 1979
State Environmental Planning Policy (Infrastructure) 2007
Wollongong Local Environmental Plan 2009

Cases Cited: *Initial Action v Woollahra Municipal Council* [2018] NSWLEC 118
Wehbe v Pittwater Council (2007) 156 LGERA 446
Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248

Texts Cited: Practice Note Class 1 Development Appeals
Wollongong Development Control Plan 2009

Category: Principal judgment

Parties: ADM Projects (Australia) Pty Ltd t/as ADM Architects (Applicant)
Wollongong City Council (Respondent)

Representation: Counsel:
A Pearman (Applicant)

Solicitors:
Hunt and Hunt Lawyers (Applicant)
A Seton, Marsdens Law Group (Respondent)

File Number(s): 2017/204945

Publication Restriction: Nil

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal under s 8.7 of the *Environmental Planning and Assessment Act 1979* (the Act) against the deemed refusal of the Applicant's Development Application No. DA-2017/493 by Wollongong City Council (the Respondent). The Applicant seeks approval for the demolition and construction of a new commercial office block. The development comprises eleven storeys of commercial office space over ground floor retail and three levels of basement car parking. The site is known as "Langs Building" with a street address of 95-109 Crown Street, Wollongong.
- 2 Following the termination of the conciliation, held pursuant to s 34 of the *Land and Environment Court Act 1979* (the Court Act), the parties continued discussion on the form of development proposed for the site. On 11 September 2018, the Applicant, by way of notice of motion, was granted leave to rely on an amended set of architectural plans.
- 3 The Respondent is satisfied that the amended plans address the issues raised by them in the Statement of Facts and Contentions dated 10 August 2017 (Exhibit 1).
- 4 The parties seek for the appeal to be resolved through consent orders.
- 5 In circumstances where the Council agrees to the grant of development consent, I am nonetheless required to carry out an assessment under s 4.15 of the Act to determine if it is lawful and appropriate to grant consent. I am also required to consider the evidence and submissions of the objectors. The Practice Note - Class 1 Development Appeals (Practice Note) sets out the procedural requirements at par 99:

"Any application for consent final orders in development appeals will be listed before the Court for determination. The parties will be required to present such evidence as is necessary to allow the Court to determine whether it is lawful and appropriate to grant the consent or approval having regard to the whole of the relevant circumstances, including the proposed conditions. The consent authority will be required to demonstrate that relevant statutory

provisions have been complied with and that any objection by any person has been properly taken into account. Additionally, the consent authority will be required to demonstrate that it has given reasonable notice to all persons who objected to the proposal of the following:

- (i) the content of the proposed orders (including the proposed conditions of consent);
 - (ii) the date of the hearing by the Court to consider making the proposed consent orders; and
 - (iii) the opportunity for any such person to be heard,
- or that, in the circumstances of the case, notification is not necessary.”

The Site and Locality

- 6 The site is located in the eastern portion of the Crown Street Mall in the Wollongong CBD and comprises four allotments. The legal description of the Site is Lot 1 DP 66347; Lot 1 DP 69724; Lot 1 DP 746944; Lot 21 DP 1059144. Lot 21 DP 1059144 (“Lot 21”) is the stratum air space allotment over Simpson Place.
- 7 The Site has frontage to the Crown Street pedestrian mall to the north, Kembla Street to the east and Simpson Place to the south. The Site currently contains a two-storey commercial building, known as “Langs Building” on the front portion, an open at-grade car park to the rear and a number of trees along the Kembla Street frontage.
- 8 To the south of the Site on the opposite side of Simpson Place is St Andrews Church.
- 9 Further to the west of the site is the Crown Street Mall, with a mixture of two- to three-storey commercial buildings present, which are a variety of ages.
- 10 The precinct includes a number of heritage items as listed in Schedule 5 of the Wollongong Local Environmental Plan 2009 (LEP 2009), identified as follows:
 - Item 6371- Wesley Uniting Church;
 - Item 6228- St Andrew’s Presbyterian Church, hall;

- Item 6239- Royal Bank Item 6284 – Row of Hills Figs Item 6285- Norfolk Island Pine;
- Item 6381- Wollongong Town Hall and former council chambers (now art gallery);
- Item 6370- Wollongong East Post Office Item 6238 – Shop.

Planning Controls

- 11 Pursuant to cll 45 and 104 of State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP), the application is integrated development as it requires approval of the electricity supply company and the NSW Roads and Maritime Authority respectively. Both authorities have provided their concurrence and their conditions are incorporated in the draft conditions agreed to in the consent orders (Exhibit 4).
- 12 The site is within the B3 Commercial Core zone under the provisions of the LEP 2009. The objectives of the zone are:
 - To enable a range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
 - To encourage appropriate employment opportunities in accessible locations.
 - To maximise public transport patronage and encourage walking and cycling.
 - To strengthen the role of the Wollongong City Centre as the regional business, retail and cultural centre of the Illawarra Region.
 - To provide for high density residential development within a mixed use development if it:
 - (a) is in a location that is accessible to public transport, employment, retail, commercial and service facilities; and
 - (b) contributes to the vitality of the Wollongong City Centre.
- 13 The proposed development is categorised as “commercial premises” and is permissible with consent. The Respondent accepts that the development is consistent with the zone objectives.

- 14 LEP 2009 at cl 4.3 Height of Buildings provides a maximum height for development on the site of 48m. The development complies with this standard.
- 15 The applicable floor space ratio (FSR) for the subject site is detailed in cl 4.4A of LEP 2009. By application of cl 4.4A(2)(b), the site has a maximum FSR of 6:1. The development proposed an FSR of 5.95:1 and is compliant with this standard.
- 16 Clause 7.13 of LEP 2009 requires the consent authority to be satisfied, prior to the grant of consent that the ground floor of the building: (a) will not be used for residential accommodation; and (b) will have at least one door or window on the front of the building facing the street. A review of the architectural plans in Exhibit A confirms this precondition is met.
- 17 Clause 7.18 of LEP 2009 requires the consent authority to be satisfied, prior to the grant of consent that the proposed development exhibits design excellence. The Respondent argues that the latest amended architectural plans, incorporating the retention of the lower two storey building façade and a slender tower form, satisfy this clause. Following a review of the amended architectural plans and the Urban Design Statement prepared by Mr Rohan Dickson (Exhibit A), I am satisfied, for the purposes of cl 7.18, that the application demonstrates design excellence and this precondition is met.
- 18 The proposed development relies on a variation to cl 8.6: Building separation within Zone B3 Commercial Core or Zone B4 Mixed Use in LEP 2009. The clause states:

8.6 Building separation within Zone B3 Commercial Core or Zone B4 Mixed Use

(1) The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.

(2) Buildings on land within Zone B3 Commercial Core or B4 Mixed Use must be erected so that:

(a) there is no separation between neighbouring buildings up to the street frontage height of the relevant building or up to 24 metres above ground level whichever is the lesser, and

(b) there is a distance of at least 12 metres from any other building above the street frontage height and less than 45 metres above ground level, and

(c) there is a distance of at least 28 metres from any other building at 45 metres or higher above ground level.

(3) Despite subclause (2), if a building contains a dwelling, all habitable parts of the dwelling including any balcony must not be less than:

(a) 20 metres from any habitable part of a dwelling contained in any other building, and

(b) 16 metres from any other part of any other building.

(4) For the purposes of this clause, a separate tower or other raised part of the same building is taken to be a separate building.

(5) In this clause:

street frontage height means the height of that part of a building that is built to the street alignment.

19 LEP 2009, at cl 4.6, provides a degree of flexibility in the application of development standards to achieve better outcomes in certain circumstances.

20 However, consent must not be granted for a development that exceeds the development standard, unless the Court has considered a request that adequately addressed the matters required to be demonstrated by cl 4.6(3), namely:

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

21 Wollongong Development Control Plan 2009 (DCP 2009) applies to the assessment of the proposed development. In particular Chapter B4, Part D13: Wollongong City Centre is of relevance.

- 22 The desired future character of the commercial core is defined in DCP 2009, Part D13: Wollongong City Centre at cl 1.1(4) as follows:

"The commercial core is the 'heart of the city' where the focus is on high quality buildings, streetscapes, public art, outdoor eating and a collection of attractive public spaces such as a new forecourt to the railway station, rejuvenated MacCabe Park and Crown Street Mall, new civic square on Crown Street and an attractive collection of laneways and arcades. The primary retail focus is Crown Street Mall. The core retail area along Crown Street is generally characterised by street enclosing buildings forming continuous building facades that provide for an active street frontage to all commercial core streets. Streets are to have continuous awnings to give weather protection to concentrated pedestrian street activity."
(Exhibit 2)

- 23 This desired character is codified in the following development controls:

- (1) Clause 2.2.1(2) "Building to street alignment and street setbacks":
which states:

"buildings are to be built up to the street alignment to reinforce the urban character and improve pedestrian amenity and activity at street level. Above street frontage height, tall buildings are to be set back to provide for sunlight to streets, and daylight to pedestrian areas and lower levels of other buildings."

The relevant development control is to have a nil setback for the street frontage height and a 4m setback above.

- (2) Clause 2.3 "Street Frontage Heights" identifies a preferred street frontage height for the commercial core of between 12m and 24m, dependant on context and sun access requirements.
- (3) Clause 2.5 "Side and Rear building setbacks and building separation" reflects the provisions of cl 8.6 of LEP 2009 which are discussed below. The objectives of cl 2.5 are:

"a) To ensure an appropriate level of amenity for building occupants in terms of daylight, outlook, view sharing, ventilation, wind mitigation, and privacy.

b) To achieve usable and pleasant streets and public domain areas in terms of wind mitigation and daylight access."

- 24 At cl 7.9 in Chapter E3 of DCP 2009 are the relevant provisions for mechanical parking systems. The Council, in opening submissions, noted it is satisfied the Applicant has provided the detail required by cl 7.9(3) and that the mechanical parking system proposed is acceptable.
- 25 It is agreed between the parties that with the use of mechanical parking the application complies with the parking requirements of DCP 2009 at Schedule 1 of cl 7.1: "Car Parking, Motor Cycle, Bicycle Requirements and Delivery / Servicing Vehicle Requirements".
- 26 As detailed at par [10], the site is within proximity of a number of listed heritage items. As a result, Chapter E11: Heritage Conservation of DCP 2009 applies. Mr Seton, in opening submissions, noted that the Council is satisfied the objectives of the DCP are met, and that the proposal does not detract from the identified significance or setting of the heritage buildings.

Assessment of the requested variation

- 27 The Applicant seeks to vary the development standard of cl 8.6 in LEP 2009 (refer to par [18]).
- 28 The submitted variation request details the extent of variation as follows:

" ...

Variation 1 - As with the original application, the proposal will adjoin Nos 111-113 Crown Street to the west at ground level in accordance with sub. clause 8.6 (a). However, in order to maintain the existing heritage façade as a podium, the proposal will not achieve the potential street frontage height.... A compliant street frontage height would extent to the top of the old Westpac building at 32 AHD. The retained façade will have a maximum height of 22.9 AHD.

...

Variation 2 – as indicated there is no adjoining building above the street frontage height. However, with the potential for future development, the 12m building separation provision contained in sub clause 8.6(b) should be considered. This would reasonably encompass a 6m setback on either side of the shared boundary line. The proposal provides a western setback ranging between 4.42 and 4.59m.

Variation 3 – The proposed building height is 47.8m resulting in the top 2.8m being assessed under sub clause 8.6(c). As with variation 2, while there is no adjoining building at this height, a setback of half the required building

separation (14m) is considered. The proposal only encompasses the roof plant level above 45m which has a minimum setback of 4.42m." (Exhibit A)

29 The onus is on the Applicant to meet the tests of cl 4.6 in seeking flexibility to the Building Separation standard at cl 8.6 of LEP 2009: *Initial Action v Woollahra Municipal Council* [2018] NSWLEC 118 at [25] (*Initial Action*). The Applicant's written request seeking to justify the contravention of the development standard must adequately address both:

- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a));
- that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)).

30 The Court, on appeal, must form a positive opinion of satisfaction that the Applicant's written request has adequately addressed the matters in cl 4.6(3): *Initial Action* at [25].

Whether compliance with the development standard is unreasonable or unnecessary

31 The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 at [42]-[51] (*Wehbe*).

32 Namely, that:

- (1) the objectives of the standard are achieved notwithstanding non-compliance with the standard (*Wehbe* test 1);
- (2) the underlying objective or purpose of the standard is not relevant to the development, so that compliance is unnecessary (*Wehbe* test 2);

- (3) that the objective would be thwarted if compliance was required, so that compliance is unreasonable (*Wehbe* test 3);
- (4) that the development has virtually been abandoned or destroyed by Councils own actions in departing from the standard (*Wehbe* test 4); or
- (5) that the zoning of the land is unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (*Wehbe* test 4).

33 In *Initial Action*, Preston CJ notes that the preceding five ways to demonstrate compliance is unreasonable or unnecessary are not exhaustive, and it may be sufficient to establish only one way (at [22]).

34 In this appeal, the Applicant has utilised the *Wehbe* test 3. The Applicant argues that the objective would be thwarted if compliance was required, so that compliance is unreasonable on the following grounds:

"In our opinion, the underlying purpose of the development standard is to provide for a sympathetic built form that maintains the privacy and amenity of surrounding properties. Notwithstanding the non-compliance, the proposal provides an improved interface with the neighbour. The minor building separation non-compliances facilitate a compliant height which is consistent with surrounding and desired future development. As indicated, the adjoining property has expressed support for the proposed non-compliance.

In addition, non-compliance creates an improved urban design outcome by retaining the existing podium and facilitating a pedestrian walkway along Simpson Street. This is consistent with the design excellence requirements under Clause 7.18 of the LEP.

...

The proposed building separation creates an improved urban design outcome and therefore enforcing strict compliance is considered unreasonable or unnecessary in the circumstances of the case."
(Exhibit A)

35 The Council accepts the Applicant's justification for the variation and agrees with its reasoning. The Council concludes:

"The non-compliant building separation distances to the western boundary better responds to the desired character of the precinct, with the setbacks to Crown and Kembla Streets being increased to retain important view corridors along Crown and Kembla Streets and to increase solar access for the church to the south.

The departure to the required building separation to the western boundary arises from Council's desire for the redevelopment of the site to incorporate the existing façade which is two storeys in height and also providing a more slender tower form above this façade than originally proposed. Retaining the two storey façade results in a lower podium level, (and) reduced bulk and sense of enclosure from the public domain. Achieving the requirement under Clause 8.6(2)(b) for there to be a distance of 12m from the adjoining building does not provide the desired streetscape outcome the circumstances."
(Exhibit 2)

- 36 The Council is satisfied that the Applicant's variation request adequately established that the compliance with the standard is unreasonable and unnecessary in the circumstances.
- 37 With the benefit of a site inspection, I accept the Applicant's reasoning at par [34] that compliance with the development standard is unreasonable and unnecessary in the circumstances of the subject site and the design proposed. I am satisfied that it is appropriate to apply the building separation standard flexibly for this particular development for the reasoning submitted by the applicant.
- 38 I find that I can be satisfied that the Applicant's written request adequately demonstrates the matters in cl 4.6(3)(a) of the LEP 2009.

Are there sufficient environmental planning grounds?

- 39 The Applicant's written request must adequately demonstrate that there are sufficient "environmental planning grounds" that justify the requested variation (cl 4.6 (3)(b)). In *Initial Action*, at [24] Preston CJ observes that there are two ways in which the request must be sufficient. Firstly, "the environmental planning grounds advanced in the written request must be sufficient to justify contravening the development standard", and secondly: "the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent

authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter (citations omitted)."

40 In considering the Applicant's case in support of the variation, the focus is on the aspect of the development that contravenes the development standard, not the development as a whole (*Initial Action* at [24]). Therefore, the environmental planning grounds must be more than the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

41 The Applicant argues that there are sufficient environmental planning grounds to justify the variation on the following grounds:

"Urban Design

While strictly non-compliant with the building separation control, the revised proposal provides a superior urban design outcome. The proposal has been amended in accordance with the **recommendations** of Council's urban design expert. These changes include retaining the existing heritage facade to create a natural variation in materials and textures with the more contemporary tower element. In addition, the tower element will be better articulated and the use of facade materials will be consistent with Council's advice. This will create visual interest and result in an improved urban design outcome. As indicated, additional massing along the western elevation will also facilitate the reintroduction of the pedestrian walkway along Simpson Place.

Heritage

Council have indicated their support for Variation No. 1 on the basis of an improved heritage outcome. This is achieved by reducing the podium height against the street and by retaining the existing facade,

In our opinion, the imposition of the development standard would interfere with the proper management, renewal and general improvement of the subject site. The proposed non-compliances facilitate an economically viable development and will result in an improved traffic, heritage and urban design outcome.

For the reasons outlined above, it is our opinion that there are sufficient environmental planning grounds to justify contravening the development standard in the particular circumstances of the case and satisfies several tests in *Wehbe*."
(Exhibit A)

42 The Council accepts the Applicant's justification. The Council concludes:

"The justification rests on the urban design and heritage outcomes from the proposed setbacks, which reflect the recommendations of Council's urban design expert to retain the heritage façade and provide a more slender element above. The proposed reduced western setbacks and increased setbacks to the Crown and Kembla Street frontages are a design response to the particular circumstances of the case given the surrounding heritage buildings and desired view corridors."

(Exhibit 2)

- 43 I am satisfied that the variation to the development standard supports an improved urban design and place making outcome for the subject site by the retention of the façade at the street level and the increased slenderness of the tower element. Equally, the improved solar access and view corridors are positive environmental planning outcomes that arise from the variation itself.
- 44 Collectively, I accept these justify the contravention of the development standard.
- 45 I find that I can be satisfied that the Applicant's written request adequately demonstrates the matters in cl 4.6(3)(b) of LEP 2009.

Are the matters in Clause 4.6(4) satisfied?

- 46 As stated in *Initial Action* at [14], cl 4.6(4) "establishes preconditions that must be satisfied before a consent authority [or the court exercising the functions of a consent authority] can exercise the power to grant development consent" (at [13]). The consent authority must form two positive opinions of satisfactions under cl 4.6(4)(a). As these preconditions are expressed in terms of the opinion or satisfaction of a decision-maker, they are a "jurisdictional fact of a special kind", because the formation of the opinion of satisfaction enlivens the power of the consent authority to grant development consent.
- 47 At cl 4.6(4)(a)(ii), the Court must be satisfied that the development will be in the public interest because it is consistent with the objectives of the Building Separation standard and the objectives of the B3 zone: *Initial Action* at [26].

- 48 Pursuant to cl 4.6(a)(ii), I am satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by subcl (3), refer to pars [38] and [48].
- 49 The objectives of the zone are provided at par [12].
- 50 The Applicant argues that the objectives of the zone are met on the following grounds:

"Objective 1 - To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.

The proposal provides both retail and office space which can cater for a wide range of tenancies and business. ... The building separation non-compliance will enhance the layout and functionality of the internal floorspace which will allow a greater range of retail, business and office spaces in accordance with the objective.

Objective 2 - To encourage appropriate employment opportunities in accessible locations.

The proposal will provide significant additional long term employment opportunities within the Wollongong commercial core, which is partly facilitated by the improved internal layout as a result of the **non-compliances**. A variety of employment opportunities are created by the commercial and retail elements of the proposal.

The area is well located in terms of public transport and is accessible from throughout the Wollongong CBD. The additional city centre based employment will enhance the vitality of the regional business centre. The proposal will also provide short term employment opportunities during the construction phase. Accordingly, in our opinion, the proposal is consistent with Objective 2.

Objective 3 - To maximise public transport patronage and encourage walking and cycling.

The proposal provides additional employment in an accessible location which allows both public and active transport commuting options. ... The site is located 800m from Wollongong Station and includes a bus stop 140m away on Burelli Street.

...

Sustainable modes of transport will be further encouraged through the provision of end of trip facilities such as bicycle storage and amenities. ... The revised proposal will increase the southern ground floor setback from 7.75m to 9.03m compared to that previously proposed. This will allow for the re-introduction of the pedestrian path along Simpson Place.

..

Objective 4-To strengthen the role of the Wollongong city centre as the regional business, retail and cultural centre of the Illawarra region.

The proposal will provide a contemporary eleven (11) storey commercial building which has the potential to become a benchmark development that stimulates further growth.

...
Cultural values will be enhanced through the retention of eight panels of the Lang's Corner facade, including the entrance, and sympathetic design either side of the entrances to the building which give a natural end of the retained eight panels. Accordingly, the proposal will strengthen the role of the Wollongong city centre as the regional hub.

Objective 5 - To provide high density residential development within a mixed use development if it:

- a) is in a location that is accessible to public transport, employment, retail, commercial and service facilities, and*
- b) contributes to the vitality of the Wollongong city centre*

This objective is not relevant as the proposal does not include a residential component."
(Exhibit A)

- 51 The objectives of the Building Separation standard are provided at cl 8.6(1), they are:

"... to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access."

- 52 The Applicant argues that the objectives of the Building Separation standard are met on the following grounds:

"Visual Appearance

Variation No. 1 will maintain the existing fabric and facade as the podium level which will provide a better visual outcome. The historic frontage will provide visual interest from the street. In addition, a lower podium level reduces the bulk and sense of enclosure from the public domain. The existing neighbouring old Westpac building is likely to be redeveloped in the near future, and therefore aligning the attached building heights for the sake of visual consistency is not considered essential in this instance.

Variation No. 2 will contribute to an improved visual appearance with an overhanging section creating interest from the street. In addition, the revised design will present a consistent building line along the western elevation which is considered an improvement on the protruding amenities block previously proposed. In any event, the adjoining property at Nos. 111-113 Crown Street is only four storeys resulting in the required 12m building separation being achieved.

Variation No. 3 is minor and will not be readily visible from the street. It will therefore not have an adverse impact on the visual appearance of the building. The size of the plant area has been reduced in the latest design and the proposed setbacks will maintain the building line of the lower levels.

...

Privacy

The proposed building separation non-compliances are unlikely to have privacy impacts on the adjoining old Westpac building and will provide a reasonable level of amenity for future development on the neighbouring site. The existing neighbouring building has a blank wall facing the subject site, inhibiting any sightlines

...

The proposed setback will provide a reasonable level of privacy and amenity for future development on the neighbouring site, being a commercial use, there are unlikely to be significant noise impacts.

...

Aural impacts will be limited by the centralised location of plant equipment and the screening provided by the fire stairs and lift.

Accordingly, the areas of non-compliance with the building separation standard are unlikely to have adverse impact on privacy.

Solar Access

To assess any **overshadowing** implications of the proposal, shadow diagrams have been prepared for 9am to 3pm on the winter solstice (June 21), summer solstice (December 21) and the equinox. Some **overshadowing** impacts are inevitable given Council's desire for greater density on the site. While the proposed building separation **non-compliances** will result in some additional **overshadowing**, this remains significantly less than a compliant building envelope. Comparison models of a compliant built form against the proposal are provided in the revised architectural drawings, in addition, the revised design has generally reduced overshadowing, mostly as a result of the reduced podium."

(Exhibit A)

- 53 The Council accepts the Applicant's arguments in the preceding and adopts the Applicant's reasoning. They conclude:

"The departure will not have any adverse impacts on the amenity of nearby developments, the streetscape or the public domain. There will be no additional **overshadowing** impacts arising from the development departure, no view impacts, no privacy impacts, no adverse impacts on the streetscape or any heritage items.

...

(Exhibit 2)

- 54 I am satisfied on the basis of the arguments submitted by the Applicant, and agreed by the Respondent, that the proposed development will be in the public interest because it is consistent with the objectives of the particular

standard and the objectives for development within the zone in which the development is proposed to be carried out. Accordingly, I find that matters in cl 4.6(4)(a)(ii) are satisfied.

55 Finally, *Initial Action* notes at [29] that despite the power under cl 4.6(2) to grant consent to development that contravenes a development standard without obtaining or assuming the concurrence of the Secretary of the Department of Planning and Environment, pursuant to s 39(2) of the Court Act, the Court should consider the matters in cl 4.6(5).

56 I find that I can be satisfied that the variation sought to the development standard does not raise any matter of significance for State or regional environmental planning, and that there are no specific circumstances that establish an overriding public benefit of maintaining the development standard in this case.

57 I find that the requirements of cl 4.6 of LEP 2009 are satisfied and the requested variation should be upheld.

58 Clause 4.6 is a precondition that must be satisfied before consent can be granted. For the above reasons, I am satisfied that the variation to the building separation development standard is warranted and consequently there is power, subject to merit assessment, to grant consent to the development application.

Merit Contentions raised

59 The Council filed a Statement of Facts and Contentions (Exhibit 1) that identified the following reasons why the unamended version of the application should be refused:

- (1) excessive Floor Space Ratio (FSR);
- (2) adverse impacts on the heritage significance of heritage items in the vicinity;

- (3) the proposed building is excessive in bulk and scale and inconsistent with the character of Crown Street;
- (4) non-compliance with provisions of DCP 2009 (setbacks, street frontage height, building depth and bulk, pedestrian amenity and building exterior);
- (5) traffic generation;
- (6) lack of concurrence from the NSW Roads and Maritime Services (RMS); and
- (7) insufficient onsite parking provided; and
- (8) inadequate provision for waste management, servicing and deliveries.

60 Consistent with the Practice Note, the Council has provided a planning assessment report that details how the Council has formed a view that it is now satisfied the above contentions are resolved and the application warrants approval. The reasoning of the Council can be summarised as follows:

- FSR:

The amended scheme has an FSR of 5.95:1, and is therefore compliant with the maximum FSR for the site of 6:1.

- Heritage, bulk and scale and character:

The amended scheme involves the dismantling and reconstruction of the existing building façade, maintaining the two storey podium height. The Council accepts outcome is consistent with the prevailing street character and will not have a detrimental impact on heritage items in proximity to the site. Further, the Council argues:

"The plans now include increased setbacks to Crown and Kembla Streets, which results in a more slender tower and reduces the shadow impact on St Andrews church. By increasing the setbacks to Crown and Kembla Streets, the scheme also reduces the visual impact when viewed along those streets.

...
It is considered that this contention has been suitably addressed and resolved."
(Exhibit 2)

The assessment report notes that the commercial floor plates of levels 7 to 10 generally complies with the controls in DCP 2009 with the exception of building depth. This variation is accepted by the Council on the basis that due to the building design the floor will receive generous solar access.

Pedestrian access and activation of the street is noted as being resolved by the amended plans.

- Non-compliance with the relevant provisions of DCP 2009:

The Council assessment report notes that they are satisfied with the amended setbacks proposed to Crown and Kembla Street, as well as the retention of the splayed corner through the reconstruction of the existing façade. The Council notes:

"The proposed tower includes a variation to the western side setback requirements. This has been provided to allow the increased setbacks to the Crown and Kembla Street frontages.

The increased tower setback to Crown Street reduces the visual impact of the tower when viewed along Crown Street, which is a key view corridor in the CBD. The applicant has provided a larger setback to Crown Street than is required at the request of Council's Urban Design expert.

The applicant has also provided a larger setback to Kembla Street to reduce the width of the tower and increase solar access for the church to the south.

...
(Exhibit 2)

- Traffic generation, RMS concurrence:

The Council assessment report notes that the RMS has provided their concurrence and advised that:

"while the traffic generation from the proposed development will impact on the level of service of the local road network, the RMS will be less affected, and

therefore a matter for Council to consider the operational efficiency of the local road network and whether any upgrades are required" (Exhibit 2).

The Council notes that the RMS comments have been assessed and these contentions have been resolved.

- Parking:

The Council assessment report notes that the applicant has addressed this contention by a lowering of the basement and the installation of mechanical stack parking to overcome the shortfall. These changes are accepted by Council and this contention is resolved.

- Waste Management:

The applicant has provided an amended design which the Council accepts demonstrates that adequate provision has been for onsite servicing and deliveries. With the imposition of the agreed conditions, the Council notes this contention is resolved.

Consideration of objections

61 The original development application was notified in June 2017. The Council received 559 objections to the development and 20 submissions in support. The issues raised in this initial notification are summarised in the Council assessment report as follows:

"- The objections relating to the closure of the Rad Bar – an existing entertainment venue in "Lang's Building". Reasons cited include the adverse impacts on the music and arts culture in Wollongong, particularly for the youth, and the impact the closure of this venue will have on the city and tourism. The Rad Bar is significant for the young adults in Wollongong, and is a drawcard for national and international bands to the region resulting in flow on economic benefits.

- Other objections can be summarised under the following areas: heritage matters (both for the existing building and for items in the vicinity), traffic concerns, contradictions to Council's "Public Spaces, Public Life" study, provision of more office space when there is already a large proportion of

vacant commercial tenancies and perceived overdevelopment of the site when expressed in terms of scale and character.

- The letters of support primarily relate to the economic benefits and job opportunities the development will bring, and the revitalisation it will provide to the eastern end of the retail pedestrian mall.”
(Exhibit 2)

62 Following the applicant being granted leave to amend their development, the Council renotified the application. The issues in the second notification are summarised in the Council assessment report as follows:

“- Retention of the ‘ugly’ façade – the manner in which the façade is being retained (by juxtaposing the new building with the existing one) is an eyesore.

- The rad bar (existing tenant of the building) is a culturally important facet of the emerging music community offering something vital for the city.

- Original concept was more appealing.

- The retention of the façade does not meet appropriate urban design, heritage or street activation disciplines.”
(Exhibit 2)

63 Following consideration of the issues raised by the public submission, the Council notes that in their assessment they do not warrant the refusal of the application. Importantly, the Council notes that “[t]he design approach has been supported by Heritage and Urban Design experts during the course of the assessment. Street activation will be achieved through the levels and design of the ground floor tenancies fronting Crown and Kembala Streets and as supported by recommended conditions of consent” (Exhibit 2).

Outcome of the appeal

64 Notwithstanding the parties’ agreement to Consent Orders in determining this matter, I have carefully considered the evidence and objections, the submissions and my observations during the onsite view. Having carefully considered the Council’s assessment report and the submissions, I am satisfied in my evaluation under s 4.15 of the Act that the amended proposal warrants approval.

65 The Practice Note requires: evidence that the approval is lawful and appropriate; satisfaction that any objections have been properly taken into account; and confirmation that reasonable notice has been given to all persons who objected to the proposal detailing the content of the proposed orders, the date of the hearing and the opportunity for them to be heard. I am satisfied that these requirements are met and accordingly, consent is granted to the development in accordance with the consent orders signed by the parties (Exhibit 4) and subject to the conditions of consent as agreed between the parties and annexed to this judgment.

Orders

66 By consent, the Court orders that:

- (1) No order as to costs;
- (2) The request to vary the development standard in cl 8.6: "Building Separation within B3 Commercial Core" of the Wollongong Local Environmental Plan 2009 is upheld;
- (3) The appeal be upheld;
- (4) Development consent be granted to Development Application No. 2017/493 (as amended) for an eleven-storey commercial building, comprising ground floor retail uses and ten storeys of office space above, including three levels of basement parking on the land at 95-109 Crown Street, Wollongong, subject to the conditions set out in Annexure A;
- (5) The exhibits are returned with the exception of Exhibits A, 3 and 4.



D M Dickson

Commissioner of the Court

Annexure A: Conditions of Consent

Annexure A

ADM Projects (Australia) Pty Ltd trading as ADM Architects

v

Wollongong City Council

Conditions of Consent

ADM Projects (Australia) Pty Ltd Trading as ADM Architects v Wollongong City Council - Land and Environment Court Proceedings No. 204945/2017

Development Application No. 2017/493 – 95-109 Crown Street, Wollongong

DEVELOPMENT CONSENT CONDITIONS

- 1 The development shall be implemented in accordance with the details and specifications set out in the following plans, identified as Project No. 2015-21 Drawing No:
 - A-000 dated March 2018 prepared by ADM Architects
 - A-100 Issue D dated 8 March 2018 prepared by ADM Architects
 - A-101 Issue F dated 22 August 2018 prepared by ADM Architects
 - A-102 Issue H dated 5 September 2018 prepared by ADM Architects
 - A-103 Issue G dated 5 September 2018 prepared by ADM Architects
 - A-104 Issue F dated 2 March 2018 prepared by ADM Architects
 - A-105 Issue G dated 2 March 2018 prepared by ADM Architects
 - A-106 Issue G dated 2 March 2018 prepared by ADM Architects
 - A-107 Issue E dated 8 February 2018 prepared by ADM Architects
 - A-108 Issue F dated 19 March 2018 prepared by ADM Architects
 - A-109 Issue E dated 2 March 2018 prepared by ADM Architects
 - A-201 Issue G dated 5 September 2018 prepared by ADM Architects
 - A-202 Issue H dated 5 September 2018 prepared by ADM Architects
 - A-203 Issue G dated 5 September 2018 prepared by ADM Architects
 - A-204 Issue H dated 5 September 2018 prepared by ADM Architects
 - A-205 Issue F dated 5 September 2018 prepared by ADM Architects
 - A-206 Issue G dated 5 September 2018 prepared by ADM Architects
 - A-409 Issue C dated 8 February 2018 prepared by ADM Architectstogether with any details on the application form, and the requirements of any supporting information received, except as amended by the conditions specified and imposed hereunder.

General Matters

2 Geotechnical

- a) No disturbance of ground is to occur beyond site boundaries. A minimum buffer between site boundaries and the construction of retaining structures is to be

recommended by the geotechnical consultant to ensure adjoining property is not adversely impacted upon by this development.

- b) Retaining wall design is not to include anchors extending on to any adjoining property without the written consent of the adjoining property owner.
- c) Permanent ground anchors are not permitted within the road. Temporary ground anchors can only be used where the Road Authority has provided written confirmation to the applicant for their use. Temporary anchors must be designed in accordance with RMS Technical Direction GTD 2012/001.
- d) A dilapidation report is required for all structures located within the zone of influence of the proposed earthworks as determined by the geotechnical consultant.
- e) An earthworks plan is to be developed by the geotechnical consultant prior to start of earthworks.
- f) All recommendations of the geotechnical consultant in their geotechnical report dated 14 February 2017 are to be accommodated in the earthworks plan.
- g) All site preparation earthworks must be undertaken with geotechnical supervision.
- h) The earthworks plan may require modification in light of any subsequent geotechnical reports commissioned to address unforeseen geotechnical conditions encountered during the site preparation earthworks.
- i) Hard bedrock where encountered will be difficult to excavate. Alternative excavation methods should be considered to minimise noise and vibration.
- j) All excavations need to be supported during and after construction particularly to protect adjoining property with nearby existing development.
- k) At the completion of the site preparation earthworks, the geotechnical consultant is to prepare a **works-as-executed** report detailing encountered geotechnical conditions and how the works addressed these conditions so that the residual geotechnical constraints can be accommodated within the structural designs for the development without adverse impact upon adjoining property. These structural designs are to be confirmed or amended by the structural engineer based on the **works-as-executed** geotechnical report.

3 **Separate Development Consent required for initial uses within the building**

Separate development consent shall be obtained for the initial occupation of the commercial and business uses within building in the event that such uses are not exempt development.

4 **Protection of Public Infrastructure**

Council must be notified in the event of any existing damage to any of its infrastructure such as the road, kerb and gutter, road shoulder, footpath, drainage structures and street trees fronting the development site, prior to commencement of any work.

Adequate protection must be provided for Council infrastructure prior to work commencing and during building operations.

Any damage to Council's assets shall be made good, prior to the issue of any Occupation Certificate or commencement of the operation.

5 **Heritage – Archaeological Report**

The proposed development is to be undertaken in strict accordance with the recommendations and conclusions of the Archaeological Assessment Report and Research Design prepared by Austral Archaeology dated 4 February 2018, unless expressly varied by any other condition of this consent.

6 **Building Work - Compliance with the Building Code of Australia**

All building work must be carried out in compliance with the provisions of the Building Code of Australia.

7 **Construction Certificate**

A Construction Certificate must be obtained from Council or an Accredited Certifier prior to work commencing.

A Construction Certificate certifies that the provisions of Clauses 139-148 of the Environmental Planning and Assessment Amendment Regulations, 2000 have been

satisfied, including compliance with all relevant conditions of Development Consent and the Building Code of Australia.

Note: The submission to Council of two (2) copies of all stamped Construction Certificate plans and supporting documentation is required within **two (2)** days from the date of issue of the Construction Certificate, in the event that the Construction Certificate is not issued by Council.

8 Disability Discrimination Act 1992

This consent does not imply or confer compliance with the requirements of the Disability Discrimination Act 1992.

It is the responsibility of the applicant to guarantee compliance with the requirements of the Disability Discrimination Act 1992. The current Australian Standard AS1428.1 (2009) – Design for Access and Mobility is recommended to be referred for specific design and construction requirements, in order to provide appropriate access to all persons within the building.

9 Restricted Vegetation Removal

This consent permits the removal of trees and other vegetation from the site within three (3) metres of the approved buildings. This consent also permits the pruning of trees within three (3) metres of approved buildings in accordance with AS 4373-2007 Pruning of Amenity Trees. No other trees or vegetation shall be removed or pruned, without the prior written approval of Council.

10 Advertising Signage

Advertising signage will require separate Council approval unless such signage is exempt.

11 Maintenance of Access to Adjoining Properties

Access to all properties not the subject of this approval must be maintained at all times and any alteration to access to such properties, temporary or permanent, must not be commenced until such time as written evidence is submitted to Council or the Principal Certifying Authority indicating agreement by the affected property owners.

12 Occupation Certificate

An Occupation Certificate must be issued by the Principal Certifying Authority prior to occupation or use of the development. In issuing an Occupation Certificate, the Principal Certifying Authority must be satisfied that the requirements of section 6.9 of the Environmental Planning and Assessment Act 1979, have been complied with as well as all of the conditions of the Development Consent.

13 Endeavour Energy conditions

a) Network Capacity / Connection

In due course the applicant for the future proposed redevelopment of the site will need to submit an application for connection of load via Endeavour Energy's Network Connections Branch to carry out the final load assessment and the method of supply will be determined. Depending on the outcome of the assessment, any additional required padmount or indoor / chamber substation will need to be located within the property (in a suitable and accessible location) and be protected (including any associated cabling) by an easement and associated restrictions benefiting and gifted to Endeavour Energy. Please refer to Endeavour Energy's Mains Design Instruction MDI 0044 'Easements and Property Tenure Rights'. Further details are available by contacting Endeavour Energy's Network Connections Branch via Head Office enquiries on telephone: 133 718 or (02) 9853 6666 from 8am - 5:30pm or on Endeavour Energy's website under 'Home > Residential and business > Connecting to our network' via the following link:

<http://www.endeavourenergy.com.au/>

Advice on the electricity infrastructure required to facilitate the proposed development can be obtained by submitting a Technical Review Request to Endeavour Energy's Network Connections Branch, the form for which FPJ6007 is attached and further details (including the applicable charges) are available from

Endeavour Energy's website under 'Our connection services'. The response to these enquiries is based upon a desktop review of corporate information systems, and as such does not involve the engagement of various internal stakeholders in order to develop a 'Connection Offer'. It does provide details of preliminary connection requirements which can be considered by the applicant prior to lodging a formal application for connection of load.

Alternatively the applicant should engage a Level 3 Accredited Service Provider (ASP) approved to design distribution network assets, including underground or overhead. The ASP scheme is administered by NSW Trade & Investment and details are available on their website via the following link or telephone 13 77 88:

<http://www.resourcesandenergy.nsw.gov.au/energy-supply-industry/pipelines-electricity-gas-networks/network-connections/contestable-works>

The proposed 'Electrical Sub' to the Simpson Place road frontage of the site will require a detailed assessment to consider the suitability of access, safety clearances, fire ratings etc. Restricted access to the substation by maintenance workers causes delays in power restoration and may have severe consequences in the event of an emergency.

b) Network Access

It is imperative that the access to the existing electrical infrastructure adjacent and on the site is maintained at all times. To ensure that supply electricity is available to the community, access to the electrical assets may be required at any time.

c) Excavation

As the development proposes a three level basement within close proximity of the property boundaries. Excavation works must be carried out in accordance with Section 49A 'Excavation work affecting electricity works' of the Electricity Supply Act 1995 (NSW) covering the carrying out or proposed carrying out of excavation work in, on or near Endeavour Energy's electrical infrastructure.

If the development entails the completion of any work in and/or affecting Endeavour Energy's adjoining electrical infrastructure, prior contact must be made to Endeavour Energy's Easements Officer, Jennie Saban, on mobile 0417484402 or alternately via email Jennie.Saban@endeavourenergy.com.au.

d) Asbestos

Endeavour Energy's G/Net master facility model indicates that the site is in a location identified or suspected of having asbestos or asbestos containing materials (ACM) present in the electricity network. Whilst Endeavour Energy's underground detail is not complete within G/Net in some areas, in older communities, cement piping was regularly used for the electricity distribution system and in some instances containing asbestos to strengthen the pipe; for insulation; lightness and cost saving.

When undertaking works on or in the vicinity of Endeavour Energy's electricity network, asbestos or ACM must be identified by a competent person employed by or contracted to the applicant and an asbestos management plan, including its proper disposal, is required whenever construction works has the potential to impact asbestos or ACM.

The company's potential locations of asbestos to which construction / electricity workers could be exposed include:

- customer meter boards;
- conduits in ground;
- padmount substation culvert end panels; and
- joint connection boxes and connection pits.

Further details are available by contacting Endeavour Energy's Health, Safety & Environment via Head Office enquiries on telephone: 133 718 or (02) 9853 6666 from 8am - 5:30pm.

e) Public Safety

Workers involved in work near electricity infrastructure run the risk of receiving an electric shock and causing substantial damage to plant and equipment. Endeavour Energy's public safety training resources, which were developed to help general public / workers to understand why you may be at risk and what you can do to work safely, must be considered. The public safety training resources are also available via Endeavour Energy's website via the following link:

<http://www.endeavourenergy.com.au/wps/wcm/connect/ee/nsw/nsw+homepage/communitynav/safety/safety+brochures>

f) Emergency Contact

In case of an emergency relating to Endeavour Energy's electrical network, the applicant should note Emergencies Telephone is 131 003 which can be contact 24 hours/7 days.

14. Demolition and reconstruction of Lang's Corner Façade

A suitably qualified heritage architect must be engaged to prepare detailed drawings of the façade and to prepare detailed reconstruction drawings and methodology for the demolition and reconstruction of the existing façade along Crown and Kembla Streets. The drawings and methodology must include (but is not limited to):

- a. identification of the building material to be retained (which may include bricks from parts of the façade which are outside the 8 panels to be reconstructed) and stored relating to the façade and awnings and prepare a marking plan to allow storage; and
- b. construction drawings to reconstruct the façade to its original detail as part of the new work;
- c. the heritage architect is to co-ordinate the integration of the façade into the new work;

The drawings and methodology must be endorsed by Council prior to any demolition works commencing.

Prior to the Issue of the Construction Certificate

15 Heritage – Interpretation Plan

Prior to the release of the Construction Certificate, an interpretation plan is to be prepared and provided to Council for written approval. The plan is to provide for the interpretation of the history of the site, for the benefit of building occupants and the broader public, and provide for onsite presentation of the history of the site, and any archaeological evidence which is found during the archaeological investigation. In the event that archaeological relics are located on the site, these should be incorporated into the planned Interpretation.

16 Car Parking and Access

The development shall make provision for a total of 213 car parking spaces (including 4 disabled car parking spaces) and 9 motorcycle parking spaces. The development shall also make provision for a minimum of 64 secure (Class B) employee bicycle spaces and 17 visitor bicycle spaces (Class C). This requirement shall be reflected on the Construction Certificate plans. Any change in the above parking numbers shown on the approved DA plans shall be dealt with via a section 96 modification to the development. The approved parking spaces shall be maintained to the satisfaction of Council, at all times.

- 17** The parking dimensions, internal circulation, aisle widths, kerb splay corners, head clearance heights, ramp widths and grades of the car parking areas are to be in conformity with the current relevant Australian Standard AS2890.1, except where amended by other conditions of this consent. Details of such compliance are to be reflected on the Construction Certificate plans.

18 Each disabled person's parking space must comply with the current relevant Australian Standard AS2890.6 – Off-street parking for people with disabilities. This requirement shall be reflected on the Construction Certificate plans.

19 **Designated Loading/Unloading Facility**

The designated loading/unloading facility must be clearly delineated with appropriate signage and or line marking to ensure the area is kept clear at all times. The designated loading/unloading facility shall be shown on the Construction Certificate plans.

20 The provision of suitable barriers, line-marking and painted signage delineating vehicular flow movements within the car parking areas. These details shall be reflected on the Construction Certificate plans.

21 **Mechanical Parking System**

Details and specifications of the mechanical parking system shall be provided to Council for approval prior to the issue of a Construction Certificate. The above-ground double car stackers to be implemented at the site shall be the *Model Number DS 2300* system provided by 'Hercules' which provides a minimum height of 1.5 m in each stacker.

22 **Mechanical Parking Space dimensions**

The width and length of the car spaces available within the mechanical parking system/stacker shall accommodate a B85 vehicle (ie. 5.4m length x 2.4m width).

23 Prior to the issue of a Construction Certificate, certification prepared by the company installing the car stackers stating that the above ground double car stackers can be accommodated within the level 3 basement car park and achieve operational heights of at least 1.5m clear for both stacked vehicles, must be submitted to Council or the PCA.

24 **Car parking management plan**

A Car Parking Management Plan shall be prepared and submitted to the Principal Certifying Authority for approval prior to the release of the Construction Certificate. The Car Parking Management Plan shall include the following requirements:

- a) Twenty-four (24) above ground double car stackers shall ONLY be located within Basement Level B3.
- b) Above ground double car stackers shall be the Hercules Model Number DS 2300 (or similar), which provides a minimum height of 1.5 m in each stacker. The car stacker equipment supplier to be confirmed prior to Construction Certificate being issued.
- c) The car stacker shall be operated as follows:
 - (i) car parking within the car stackers would be allocated to a pair of suitable vehicles from the same tenant;
 - (ii) the default setting of the stacker is to have the upper stacker lowered so the first vehicle accessing the pair of spaces would drive onto the upper space;
 - (iii) upon parking the vehicle, the driver would raise the stacker to allow the second vehicle into the bottom space; and
 - (iv) when the last vehicle departs the car stacker, the driver would return the stacker so the upper space is in the low position.
- d) No tenant shall be allocated parking only within car stackers. Any tenant with parking provided in a car stacker shall have at least 25% of its allocation provided in standard spaces. (Note, this is to provide flexibility in accommodating parking for a range of vehicle sizes).

25 **Parking allocation plan**

The Applicant shall prepare a detailed car parking allocation plan that clearly identifies which residential unit or commercial / retail tenancy is to be assigned with the proposed 28 tandem, 10 small car and 48 stacked car parking spaces. This requirement shall be reflected on the Construction Certificate plans.

26 **Loading bay design**

The on-site service bay area and its associated manoeuvring area shall be designed and constructed to facilitate access by a 12.5m long Heavy Rigid Vehicle (HRV), in accordance with AS2890.2 such that all vehicular manoeuvring shall occur fully on-site. The driveway serving the off-street car park and loading dock shall be designed and constructed to meet the swept path needs of a 12.5m HRV entering and leaving the site in a forward direction and be fully contained within the carriageway of Simpson Place and not traverse over existing kerbs. The roller door and intercom system serving the basement car park shall be located at the top of the ramp so as to allow unimpeded HRV access to the loading bay. These requirements must be reflected on the Construction Certificate plans.

27 **Site Loading/Delivery and Waste Management Plan**

The applicant must provide a Site Loading/Delivery and Waste Management Plan to ensure the safe operation of service vehicles within the loading dock. Within this plan must be provisions relating to the security roller door. The security roller door must remain open while the loading dock is in use to allow all service vehicles to successfully manoeuvre in and out of the loading dock. Warning signage shall be provided, to the satisfaction of Wollongong City Council's Development Engineering Section, to reinforce this requirement to drivers of all service vehicles. These requirements must be reflected on the Construction Certificate plans.

28 **Loading area height clearance**

A minimum height clearance of 4.5m shall be provided for the full extent of all Heavy Rigid Vehicle access and on-site manoeuvring areas. This requirement shall be reflected on the Construction Certificate plans.

29 Bicycle parking facilities must have adequate weather protection and provide the appropriate level of security as required by the current relevant Australian Standard AS2890.3 - Bicycle Parking Facilities. This requirement shall be reflected on the Construction Certificate plans.

30 **Site Management, Pedestrian and Traffic Management Plan (Where Works are Proposed in a Public Road Reserve)**

A Site Management, Pedestrian and Traffic Management Plan must be submitted to the Principal Certifying Authority and Council (in the event that Council is not the Principal Certifying Authority) for approval of both the Principal Certifying Authority and Council, prior to the issue of the Construction Certificate. This plan shall address what measures will be implemented for the protection of adjoining properties, pedestrian safety and traffic management and shall be in compliance with the requirements of the latest versions of Australian Standard AS1742 - Traffic Control Devices for Works on Roads and the RMS Traffic Control at Worksites Manual.

This plan is required to maintain public safety, minimise disruption to pedestrian and vehicular traffic within this locality and to protect services, during demolition, excavation and construction phases of the development. This plan shall include the following aspects:

- a) proposed ingress and egress points for vehicles to/from the construction site;
- b) proposed protection of pedestrians, adjacent to the construction site;
- c) proposed pedestrian management whilst vehicles are entering/exiting the construction site;
- d) proposed measures to be implemented for the protection of all roads and footpath areas surrounding the construction site from building activities, crossings by heavy equipment, plant and materials delivery and static load from cranes, concrete pumps and the like;
- e) proposed method of loading and unloading excavation machines, building materials formwork and the erection of any part of the structure within the site;
- f) proposed areas within the site to be used for the storage of excavated material, construction materials and waste containers during the construction period;
- g) proposed traffic control measures such as advanced warning signs, barricades, warning lights, after hours contact numbers etc are required to be displayed where works are in progress in any road reserve and shall be in accordance the latest

- versions of the NSW Roads and Maritime Service's Specification - "Traffic Control at Work Sites Manual" and the Australian Standard AS1742. – "Manual of Uniform Traffic Control Devices" and accompanying field handbooks (SAA HB81);
- h) proposed method of support of any excavation, adjacent to adjoining buildings or the road reserve. The proposed method of support is to be certified by an accredited certifier in Civil Engineering; and
- i) proposed measures to be implemented, in order to ensure that no soil/excavated material is transported on wheels or tracks of vehicles or plant and deposited on the roadway.

The approved plan shall be implemented, prior to the commencement of any works upon the construction site.

Note: Any proposed works or placement of plant and equipment and/or materials within any road reserve will require the separate approval of Council, prior to the commencement of such works, pursuant to the provisions of the Roads Act 1993.

- 31 A change in driveway paving is required at the entrance threshold within the property boundary to clearly show motorists they are crossing a pedestrian area. Between the property boundary and the kerb, the developer must construct the driveway pavement in accordance with the conditions, technical specifications and levels to be obtained from Council's Manager Works. This requirement shall be reflected on the Construction Certificate plans and any supporting documentation.

32 **Structures Adjacent to Driveway**

Any proposed structures adjacent to the driveway shall comply with the requirements of the current relevant Australian Standard AS2890.1 (figure 3.2 and 3.3) to provide for adequate pedestrian and vehicle sight distance. This includes, but is not limited to, structures such as signs, letterboxes, retaining walls, dense planting etc. This requirement shall be reflected on the Construction Certificate plans.

- 33 Details of the proposed connecting pipeline to Council's existing drainage system shall be provided in conjunction with the detailed drainage design for the site. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.

34 **Water/Wastewater Entering Road Reserve**

Provision shall be made for a minimum 200mm wide grated box drain along the boundary of the property at the vehicular crossing/s to prevent surface water entering the road reserve. This requirement shall be reflected on the Construction Certificate plans.

35 **Detailed Drainage Design**

A detailed drainage design shall be submitted with the Construction Certificate documentation for the proposed development. This detailed drainage design shall be prepared by a suitably qualified civil engineer in accordance with Chapter E14 of Wollongong City Council's Development Control Plan 2009, conditions listed under this consent, and generally in accordance with The Civil Design, Job no. 160806, Drawing No.C02 to C05, Revision 4, by Greenvue Consulting, dated 14/11/2017. The proposed stormwater disposal system for the development shall be designed to replicate the existing distribution of stormwater discharges from the site to ensure no localised increase in stormwater discharges into Council's existing stormwater drainage system.

36 **Pump System**

A pump system shall be provided in association with the detailed drainage design for the site to cater for stormwater from a **prolonged/extreme** storm event entering the basement. The pump system shall be designed by a suitably qualified and experienced civil engineer and reflected on the Construction Certificate plans and supporting documentation.

37 **Basement Waterproofing**

Full engineering details of the proposed wall around the basement car park shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate. These shall include construction details indicating that no ingress of stormwater is possible into the basement levels other than from sub-soil drainage, vehicle wash water and runoff from the driveway that drains towards the basement. This applies to any

proposed opening such as doors or ventilation louvres. The problem of backwater from the stormwater pipeline entering the basement car park level shall be addressed by a method such as a flap gate or one-way valve system.

38

Crown and Kembla Streets and Simpson Place – Detailed Civil Engineering Design – Council Land

A detailed civil engineering design shall be provided for the proposed frontage works within the road reserve of Crown and Kembla Streets and Simpson Place and/or Council Land. The details must be submitted to Councils Development Engineering Manager for assessment. The detailed civil engineering design shall be prepared by a suitably qualified practicing civil engineer in accordance with the relevant Council engineering standards. The design plans shall include:

- a) Levels and details of all existing and proposed **infrastructure/services** such as kerb and gutter, public utility, pits, poles, fencing, stormwater drainage, adjacent road carriageway crown and footpath levels, and shall extend a minimum of 5 metres beyond the limit of works.
- b) Footpath longitudinal sections, and cross-sections at 10 metre intervals as well as including all building entrance points and transitions to existing at the property boundary demonstrating compliance with the latest versions of AS 1428.1, AS/NZS 2890.1, the Disability Discrimination Act and the AUSTROAD road design standards.
- c) Engineering details of the proposed pit and pipe stormwater drainage system within Council's road reserve, including a hydraulic grade line analysis and longitudinal section of the proposed system showing calculated flows, velocity, pits, pipe size/class, grade, inverts and ground levels. Each proposed pit must be constructed generally in accordance with Wollongong City Council's Engineering Standard Drawings.
- d) Where any adjustments to public utilities are proposed the applicant shall submit documentary evidence that they have the consent of the owner of the public utility authority.
- e) All construction must be in accordance with the requirements of Council's Subdivision Code. Evidence that this requirement has been met must be detailed on the engineering drawings.
- f) Details are to be provided regarding the type of materials used for construction. They should conform to the adjacent road reserve.

The detailed civil engineering design and supporting documentation shall be submitted to and approved by Wollongong City Council's Development Engineering Manager prior to the issue of any Construction Certificate.

39

Excavation and Retaining Structures adjacent to Public Roads

The design of all permanent and temporary retaining structures within the zone of influence of any Council assets including the road pavement, stormwater pipes and pits, must be provided to and approved by Wollongong City Council and the Principal Certifying Authority for assessment prior to the issue of the Construction Certificate. The design must be prepared in accordance with the RMS Technical direction GTD 2012/001, by a qualified Civil Engineer, NPER 3 accreditation with the Institute of Engineers Australia and experienced in structural design. The plan must clearly show that all components of the retaining structure and associated drainage is wholly located within the subject site. The design must be supported by:

- a) A geotechnical report prepared in accordance with the requirements of the RMS Technical direction GTD 2012/001.
- b) A dilapidation survey of the existing Council infrastructure
- c) Details of the proposed monitoring program for the excavation and retaining structures, and relevant threshold actions prepared in accordance with RMS Technical direction GTD 2012/001.

40 **Construction Management Plan**

Prior to the release of a Construction Certificate or the commencement of any works at the site, a detailed Construction Management Plan (CMP) prepared by a suitably qualified person shall be submitted to and approved by Council. The construction management plan shall include (but not be limited to) the following details:

- a) details of staging and timing;
- b) plan of proposed construction storage area;
- c) parking for construction workers during the demolition and construction phases;
- d) the type of materials/plant/ equipment to be transported to and stored at the site and how is it to be transported and stored;
- e) timing of delivery of materials;
- f) the proposed access points to the site during construction;
- g) treatment of barricading/ hoarding for construction/and restricting access;
- h) address all environmental aspects of the development's demolition and construction phases including soil and water management/erosion and sediment control plan; noise and vibration management plan; dust suppression/ dust management plan; waste management plan and litter control;
- i) construction noise mitigation measures; and
- j) timing of waste collection during construction.

A Construction Certificate shall not be released by the Principal Certifying Authority and no works shall commence until such time as Council's written approval has been obtained for the construction management plan. The approved construction management plan shall be complied with at times.

41 **Substation Design**

Prior to the release of a Construction Certificate, the developer shall obtain and provide evidence of Endeavour Energy's approval of the substation design. The substation shall be designed in accordance with Endeavour Energy's requirements and standards for access, security, drainage, ventilation and fire rating; and shall be located in the 'Electrical Sub' position as indicated on the Ground Floor plan (Project No. 2015-21, Drawing No. A-105 Issue G dated 2 March 2018).

42 **Applicant/Developer to bear costs for any utility service relocation**

The arrangements and costs associated with any adjustment to a public utility service shall be borne by the applicant/developer. Any adjustment, deletion and/or creation of public utility easements associated with the approved works are the responsibility of the applicant/developer. The submission of documentary evidence to the Principal Certifying Authority which confirms that satisfactory arrangements have been put in place regarding any adjustment to such services is required prior to the release of the Construction Certificate.

43 **Landscaping**

A final Landscape Plan prepared in accordance with the requirements of Wollongong City Council DCP 2009 Chapter E6 and the approved Landscape Plan (ie as part of this consent) must be submitted to and approved by the Principal Certifying Authority, prior to the release of the Construction Certificate.

Certification from a suitably qualified and experienced landscape designer and drainage consultant must be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate, confirming that the landscape plan and the drainage plan are compatible.

45 **Podium Planting**

All podium planting areas shall be provided with a waterproofing membrane that can provide a minimum 10 year warranty on the product. Protective boarding shall be installed to protect the membrane from damage. All podium planting areas shall be provided with an

adequate drainage system connected to the approved stormwater drainage system. Planter box must be backfilled with free draining planter box soil mix and organic mulch only. Maximum decorative gravel pebble size shall be 10mm diameter.

46 **Landscape Maintenance Program**

A landscape maintenance program must be implemented in accordance with the approved Landscape Plan for a minimum period of 12 months after the issue of the Occupation Certificate to ensure that all landscape work becomes well established by regular maintenance. Details of the program must be submitted with the Landscape Plan to the Principal Certifying Authority prior to release of the Construction Certificate.

47 **Landscape Design for Gardens on Roof Structures**

Gardens shall be provided on the non-trafficable areas on Levels 1 and 2 to enhance the visual amenity of these areas.

The Landscape Plan for the gardens on the roof structures must include details of suitable shade and wind tolerant species, adequate drainage, irrigation and access for maintenance during establishment and in perpetuity for the life of the development.

The Landscape Plan is to be prepared by a registered Landscape Architect or person eligible for registration with the Australian Institute of Landscape Architects in accordance with the requirement of Chapter E6 – Landscape of WDCP 2009.

The Guide for Green Roofs, Walls and Facades available from <http://www.growinggreenguide.org/> is a suitable reference document to address the considerations of the design such as structural requirements, drainage and species consideration.

The above details must be reflected on the documentation submitted for Construction Certificate.

48 **External Finishes**

The building shall be constructed and finished in accordance with the approved schedule of finishing materials and colours. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.

49 **Glass Reflectivity Index**

The reflectivity index of the glass used in the external façade of the building shall not exceed 20 per cent. The details and samples of the glass to be used are to be submitted with the Construction Certificate together with written evidence that the reflectivity of the glass is 20 per cent or less.

50 **Internal ramping**

If the finished floor levels will result in a footpath grade that exceeds the maximum 2.5% permitted, the grade change shall be dealt with through internal ramping within the property boundaries. In some cases this may require internal ramps within the retail tenancies, which must comply with the Building Code of Australia and the Disability Discrimination Act 1992. Details of such shall be included on the plans for review by the Principal Certifying Authority prior to the issue of the Construction Certificate.

51 The depth and location of all services (ie gas, water, sewer, electricity, telephone, traffic lights, etc) must be ascertained and reflected on the Construction Certificate plans and supporting documentation.

52 **Present Plans to Sydney Water**

Approved plans must be submitted online using Sydney Water Tap, available through www.sydneywater.com.au to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

The Certifying Authority must ensure that Sydney Water has issued an approval receipt prior to the issue of a Construction Certificate.

Visit www.sydneywater.com.au or telephone 13 20 92 for further information.

53 **Telecommunications**

The submission of documentary evidence from an approved telecommunications carrier to the Principal Certifying Authority confirming that underground telecommunication services are available for this development is required prior to the issue of the Construction Certificate.

54 **External Lighting**

Any lighting of external areas within the development such as driveways and car parking entry, shall be designed and located in a manner to prevent light spill and/ or glare impacts on neighbouring properties. Light placement and design shall be indicated on the Construction Certificate drawings.

55 **Under awning lighting**

Appropriate lighting shall be provided under all awnings to the building to provide visibility and safety. The locations of the under awning lighting shall be included on the Construction Certificate plans prior to the issue of the Construction Certificate.

56 **Engineering Plans and Specifications - Retaining Wall Structures Greater than 1m**

The submission of engineering plans and supporting documentation of all proposed retaining walls greater than 1m to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate. The retaining walls shall be designed by a suitably qualified and experienced civil and/or structural engineer. The required engineering plans and supporting documentation shall include the following:

- a) A plan of the wall showing location and proximity to property boundaries;
- b) An elevation of the wall showing ground levels, maximum height of the wall, materials to be used and details of the footing design and longitudinal steps that may be required along the length of the wall;
- c) Details of fencing or handrails to be erected on top of the wall;
- d) Sections of the wall showing wall and footing design, property boundaries and backfill material. Sections shall be provided at sufficient intervals to determine the impact of the wall on existing ground levels. The developer shall note that the retaining wall and footing structure must be contained wholly within the subject property;
- e) The proposed method of subsurface and surface drainage, including water disposal;
- f) Reinforcing and joining details of any bend in the wall at the passing bay of the accessway;
- g) The assumed loading used by the engineer for the wall design.
- h) Flows from adjoining properties shall be accepted and catered for within the site. Finished ground and top of retaining wall levels on the boundary shall be no higher than the existing upslope adjacent ground levels.

57 **Acid Sulfate Soils Management Strategy**

An Acid Sulfate Soils Management strategy (prepared by a suitably qualified and experienced environmental/geotechnical consultant) shall be submitted to the Principal Certifying Authority, prior to the issue of the Construction Certificate. This strategy is required to recommend specific procedures and mitigation measures and shall include a site analysis from a NATA registered laboratory. This strategy shall address the following aspects:

- a) Specific mitigative measures to minimise the disturbance of acid sulfate soils as well as measures relating to acid generation and acid neutralisation of the soil;
- b) Management of the excavated material;
- c) Measures taken to neutralise the acidity; and
- d) Run-off control measures.

The recommendations of the strategy shall be completed, prior to the commencement of building works.

58 **Property Addressing Policy Compliance**

Prior to the issue of any construction certificate, the developer must ensure that any site addressing complies with Council's **Property Addressing Policy** (as amended). Where appropriate, the developer must also lodge a written request to Council's **Infrastructure Systems & Support – Property Addressing** (propertyaddressing@wollongong.nsw.gov.au), for the site addressing prior to the issue of the construction certificate. Enquiries regarding property addressing may be made by calling 4227 8660.

59 **Footpath Paving City Centre**

The developer is responsible for the construction of footpath paving for the entire frontage of the development for the full width of the verge. The type of paving for this development shall be in accordance with the Wollongong City Council Public Domain Technical Manual. - basalt pavement will be required on Kembla Street and on Simpson Place.

A nominal two percent (2%) minimum one percent (1%), maximum two and a half percent (2.5%) cross fall is to be provided from the ground level retail facade extending to the back of kerb. Any changes of level, ramps or stairs and associated tactile markers and handrails are to be contained within the interior of the retail space, not the exterior of the building façade. The design must enable activation of the retail spaces and the public domain.

The driveway entry threshold from the property boundary line to the face of kerb is to match the footpath material and be designed to withstand predicted traffic loadings.

The driveway threshold finish within property boundary line is to contrast with driveway entry.

The footpath and driveway entry on the council property must be installed to the satisfaction of WCC Manager of Works.

A Landscape Plan is to be submitted to and approved by Council prior to the issue of the Construction Certificate showing proposed paving, footpath design levels, street tree details and location of all services.

60 **Street Trees City Centre**

The developer must address the street frontage by installing street tree planting. The number and species for this development are four Illawarra Flame Trees (*Brachychiton acerifolius*) 200 litre container size in accordance with AS 2303:2015 Tree stock for landscape use. Tree pit detailing is to be in accordance with the Wollongong City Council Public Domain Technical Manual. Dial Before You Dig must be consulted prior to any excavation on site. Pot holing must be carried out to determine service location. Location of street tree plantings to be sited to ensure no conflict occurs with street light poles.

Tree pits must be adequately mulched, plants installed and tree guard/staking/tree grille/edging installed to the satisfaction of WCC Manager of Development Engineering.

These requirements shall be reflected on the Construction Certificate plans and any supporting documentation.

61 **Development Contributions**

Pursuant to Section 4.17 of the Environmental Planning and Assessment Act 1979 and the Wollongong City-Wide Development Contributions Plan (2018), a monetary contribution of \$890,900.00 (subject to indexation) must be paid to Council towards the provision of public amenities and services, prior to the release of any associated Construction Certificate.

This amount has been calculated based on the estimated cost of development and the applicable percentage rate.

The contribution amount will be subject to indexation until the date of payment. The formula for indexing the contribution is:

$$\text{Contribution at time of payment} = \$C \times (CP2/CP1)$$

Where:

\$C is the original contribution as set out in the Consent

CP1 is the Consumer Price Index; All Groups CPI; Sydney at the time the consent was issued

CP2 is the Consumer Price Index; All Groups CPI; Sydney at the time of payment

Details of CP1 and CP2 can be found in the Australian Bureau of Statistics website – Catalogue No. 6401.0 - Consumer Price Index, Australia.

The following payment methods are available:

METHOD	HOW	PAYMENT TYPE
Online	http://www.wollongong.nsw.gov.au/applicationpayments Your Payment Reference: 840085	<input type="checkbox"/> Credit Card
In Person	Wollongong City Council Administration Building - Customer Service Centre Ground Floor 41 Burelli Street, WOLLONGONG	<input type="checkbox"/> Cash <input type="checkbox"/> Credit Card <input type="checkbox"/> Bank Cheque
PLEASE MAKE BANK CHEQUE PAYABLE TO: Wollongong City Council (Personal or company cheques are not accepted)		

A copy of the Wollongong City-Wide Development Contributions Plan (2018) and accompanying Fact Sheet may be inspected or obtained from the Wollongong City Council Administration Building, 41 Burelli Street, Wollongong during business hours or on Council's web site at www.wollongong.nsw.gov.au

Prior to the Commencement of Works

62 Appointment of Principal Certifying Authority

Prior to commencement of work, the person having the benefit of the Development Consent and a Construction Certificate must:

- Appoint a Principal Certifying Authority (PCA) and notify Council in writing of the appointment irrespective of whether Council or an accredited private certifier is appointed; and
- notify Council in writing of their intention to commence work (at least two days notice is required).

The Principal Certifying Authority must determine when inspections and compliance certificates are required.

63 Sign – Supervisor Contact Details

Before commencement of any work, a sign must be erected in a prominent, visible position:

- stating that unauthorised entry to the work site is not permitted;
- showing the name, address and telephone number of the Principal Certifying Authority for the work; and
- showing the name and address of the principal contractor in charge of the work site and a telephone number at which that person can be contacted at any time for business purposes.

This sign shall be maintained while the work is being carried out and removed upon the completion of the construction works.

64 Temporary Toilet/Closet Facilities

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided must be:

- a standard flushing toilet; and
- connected to either:

- i) the Sydney Water Corporation Ltd sewerage system or
- ii) an accredited sewage management facility or
- iii) an approved chemical closet.

The toilet facilities shall be provided on-site, prior to the commencement of any works.

65 **Structural Engineer's Details**

Structural engineer's details for all structurally designed building works such as reinforced concrete footings, reinforced concrete slabs and structural steelwork must be submitted to the Principal Certifying Authority, prior to the commencement of any works on the site.

66 **Hoardings (within any Public Road Reserve)**

The site must be enclosed with a suitable hoarding (type A or B) or security fence of a type in accordance with the Works and Services Division Design Standard, and must satisfy the requirements of the Occupational Health and Safety Act, the Occupational Health and Safety Regulations and Australian Standard AS 2601. This application must be submitted to Council's Works and Services Division, and a permit obtained, before the erection of any such hoarding or fence.

67 **Enclosure of the Site**

The site must be enclosed with a suitable security fence to prohibit unauthorised access, to be approved by the Principal Certifying Authority. No building work is to commence until the fence is erected.

68 **Demolition Works**

The demolition of the relevant existing portion of the building shall be carried out in accordance with Australian Standard AS2601 (2001): The Demolition of Structures or any other subsequent relevant Australian Standard and the requirements of the SafeWork NSW.

No demolition materials shall be burnt or buried on-site. The person responsible for the demolition works shall ensure that all vehicles leaving the site carrying demolition materials have their loads covered and do not track soil or waste materials onto the road. Any unforeseen hazardous and/or intractable wastes shall be disposed of to the satisfaction of the Principal Certifying Authority. In the event that the demolition works may involve the obstruction of any road **reserve/footpath** or other Council owned land, a separate application shall be made to Council to enclose the public place with a hoarding or fence over the footpath or other Council owned land.

69 **Notification to SafeWork NSW**

The demolition licence holder who proposes demolition of a structure or part of a structure that is loadbearing or otherwise related to the physical integrity of the structure that is at least six metres in height, involving load shifting machinery on a suspended floor, or involving the use of explosives must notify SafeWork NSW in writing at least five (5) calendar days before the work commences.

70 **Demolition Notification to Surrounding Residents**

Demolition must not commence unless at least 2 days written notice has been given to adjoining residents of the date on which demolition works will commence.

71 **Construction Environmental Management Plan**

A Construction Environmental Management plan shall be submitted to the Principal Certifying Authority prior to the **commencement** of works. The plan shall address as minimum, the vehicle traffic, odour and vapour, dust, plant and machinery noise, water and sediment management, surface water, subsurface seepage and accumulated excavation water, sediment from equipment and cleaning operations, site security, working hours, contact information, incident response and contingency management.

72 An Excavated Soil Material Disposal Plan must be submitted to the Principal Certifying Authority prior to the commencement of works. This plan shall include details of the batching, sampling and analysis procedures as per the Department of Environment, Climate Change and Water (DECCW) (2009) *Waste Classification Guidelines*. The plan

shall be prepared by a suitably qualified and experienced consultant. A copy of the plan shall be forwarded to council.

73 **Consultation with SafeWork NSW – Prior to Asbestos Removal**

A licensed asbestos removalist must give written notice to SafeWork NSW at least five (5) days before licensed asbestos removal work is commenced.

74 **Hazardous Material Survey**

At least one week prior to demolition, the applicant must prepare a hazardous materials survey of the site and submit to Council a report of the results of the survey. **Hazardous materials** includes, but are not limited to, asbestos materials, synthetic mineral fibre, roof dust, PCB materials and lead based paint. The report must include at least the following information:

- a) the location of hazardous materials throughout the site;
- b) a description of the hazardous material;
- c) the form in which the hazardous material is found, eg AC sheeting, transformers, contaminated soil, roof dust;
- d) an estimation (where possible) of the quantity of each particular hazardous material by volume, number, surface area or weight;
- e) a brief description of the method for removal, handling, on-site storage and transportation of the hazardous materials, and where appropriate, reference to relevant legislation, standards and guidelines;
- f) identification of the disposal sites to which the hazardous materials will be taken.

75 **Asbestos Hazard Management Strategy**

An appropriate hazard management strategy shall be prepared by a suitably qualified and experienced licensed asbestos assessor pertaining to the removal of contaminated soil, encapsulation or enclosure of any asbestos material. This strategy shall ensure any such proposed demolition works involving asbestos are carried out in accordance with SafeWork NSW requirements (<<http://www.safework.nsw.gov.au>>). The strategy shall be submitted to the Principal Certifying Authority and Council (in the event that Council is not the Principal Certifying Authority), prior to the **commencement** of any works.

The approved strategy shall be implemented and a clearance report for the site shall be prepared by a licensed asbestos assessor and submitted to the Principal Certifying Authority and Council (in the event that Council is not the Principal Certifying Authority), prior to the issue of an Occupation Certificate or **commencement** of the development. The report shall confirm that the asbestos material has been removed or is appropriately encapsulated based on visual inspection plus sampling if required and/or air monitoring results and that the site is rendered suitable for the development.

76 **Contaminated Roof Dust**

Any existing accumulations of dust in ceiling voids and wall cavities must be removed prior to any demolition work commencing. Removal must take place by the use of an industrial vacuum fitted with a high efficiency particulate air (HEPA) filter.

77 **Waste Management**

The developer must provide an adequate receptacle to store all waste generated by the development pending disposal. The receptacle must be regularly emptied and waste must not be allowed to lie or accumulate on the property other than in the receptacle. Consideration should be given to the source separation of recyclable and reusable materials.

78 **Support for Neighbouring Buildings**

This consent requires the preservation and protection of neighbouring buildings from any damage and if necessary, requires the underpinning and support of any neighbouring building in an approved manner. The applicant or the contractor carrying out the work must at least seven days in advance of any excavation works below the level of the base of the footings of a building on an adjoining allotment, including a public road or place, give written notice of intention to carry out such works to the property owner of the affected adjoining

building and furnish specific written details and supporting plans or other documentation of the proposed work.

The adjoining property owner of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

79 **Sediment Control Measures**

The developer must ensure that **sediment-laden** runoff from the site is controlled at all times subsequent to commencement of construction works. Sediment control measures must be maintained at all times and checked for adequacy at the conclusion of each day's work.

80 **Footpath Levels**

Where required to construct footpath paving for the entire frontage of the development or build up to the property boundary, footpath levels must be obtained from Council's Development Engineering Division prior to the issue of Construction Certificate. This can be achieved by filling out an Application for Footpath Levels form and payment of the relevant fee.

All such structures, finished floor levels and internal driveway slabs shall be constructed to these approved levels.

The longitudinal grade of the footpath must be parallel to the top of kerb level and all building entrance adjustments for level access to building floor levels must be developed within the private property of the building in accordance with the requirements of the latest versions of AS1428.1 (2009), the Building Code of Australia and the Disability Discrimination Act. No adjustments to the uniform and even longitudinal grade of the footpath at the boundary line will be permitted for access points to buildings.

A copy of the approved levels shall be submitted to the Principal Certifying Authority prior to works commencing.

81 **Notification to Council of any Damage to Council's Infrastructure**

Council must be notified in the event of any existing damage to any of Council's infrastructure including, but not limited to the road, kerb and gutter, road shoulder, footpath, drainage structures and street trees fronting the development prior to the commencement of work. Adequate protection must be provided to Council infrastructure prior to work commencing and during the construction period. Any damage to Council's assets shall be restored in a satisfactory manner prior to the issue of the Occupation Certificate.

82 **Dilapidation Report**

The developer shall prepare and submit to the Principal Certifying Authority a Dilapidation Report recording the condition of the existing streetscape, street trees and neighbouring buildings prior to work commencing and include a detailed description of elements and a photographic record.

83 **Works in Road Reserve – Major works**

Any occupation, use, disturbance or work on the footpath or road reserve for construction purposes, which is likely to cause an interruption to existing pedestrian and / or vehicular traffic flows requires Council consent under Section 138 of the Roads Act 1993.

The application form for Works within the Road Reserve – Section 138 Roads Act can be found on Council's website. The form outlines the requirements to be submitted with the application, to give approval to commence works under the roads act. It is advised that all applications are submitted and fees paid, 5 days prior to the works within the road reserve are intended to commence. An application must be obtained from Wollongong City Council's Development Engineering Team prior to any works commencing where it is proposed to carry out activities such as, but not limited to, the following:

- (a) Digging or disruption to footpath/road reserve surface;
- (b) Loading or unloading machinery/equipment/deliveries;
- (c) Installation of a fence or hoarding;
- (d) Stand mobile crane/plant/concrete pump/materials/waste storage containers;

- (e) Pumping stormwater from the site to Council's stormwater drains;
- (f) Installation of services, including water, sewer, gas, stormwater, telecommunications and power;
- (g) Construction of new vehicular crossings or footpaths;
- (h) Removal of street trees;
- (i) Carrying out demolition works.

Restoration must be in accordance with the following requirements:

- (a) All restorations are at the cost of the Applicant and must be undertaken in accordance with Council's standard document, "Specification for work within Council's Road reserve".
- (b) Any existing damage within the immediate work area or caused as a result of the work/ occupation, must also be restored with the final works.

84 **Temporary Road Closure(s)**

If a road closure is required, an approval must be obtained (before the road closure occurs) from City of Wollongong Traffic Committee and Wollongong City Council.

Note: It may take up to eight (8) weeks for approval. An application for approval must include a Traffic Control Plan prepared by a suitably qualified person, which is to include the date and times of closure and any other relevant information. The traffic control plan shall satisfy the requirements of the latest versions of Australian Standard AS1742-Traffic Control Devices for Works on Roads and the RMS Traffic Control at Worksites Manual.

85 **Heritage Excavation Permit**

The applicant must obtain an excavation permit from the NSW Heritage Branch of the Office of Environment and heritage under Section 140 of the NSW Heritage Act 1977 prior to the commencement of any site works that will disturb the ground surface. The development is to be undertaken in strict accordance with any conditions and requirements of the Excavation Permit.

A copy of all correspondence, and any documentation and archaeological reporting resulting from the archaeological investigations on the site is to be provided to Council.

86 **Heritage - Photographic Recording**

Prior to the commencement of works, the existing building is to be documented through a photographic recording prepared in accordance with the NSW Heritage Branch Guidelines. A copy of the recording is to be provided to Council's Heritage Staff for written approval prior to the commencement of demolition work. A copy of the final recording is to be provided to Wollongong City Council for inclusion in the local studies collection of the Wollongong City Library.

During Demolition, Excavation or Construction

87 **Heritage Supervision of façade works**

- A The heritage architect engaged must oversee the dismantling of the façade and work with all relevant contractors to ensure the demolition process and salvage methodology is in accordance with the approved methodology endorsed by Council as referred to in condition 14.
- B The heritage architect engaged must oversee the reconstruction of the façade and is to be given authority to ensure the work is undertaken to match the original detail and be carried out in accordance with the approved drawings and methodology endorsed by Council.
- C The heritage architect is to photographically record the process of dismantling and re-instating the facade works.

88 **Supervision of Engineering Works**

All engineering works associated with the development are to be carried out under the supervision of a practicing engineer.

89 **Mechanical Plants and Exhaust Ventilation system**

(a) Mechanical Exhaust

Centralised mechanical exhaust ventilation must be provided to the building and all commercial kitchens such as cafes and restaurants cooking appliances installation as per AS4674-2004, AS1668.2-1991 and the grease filters to comply with AS1530.1.

(b) Outdoor Air Conditioning or refrigeration units

The outdoor units for refrigeration system including air conditioners shall have suitable acoustic enclosure to comply with the noise guidelines.

(c) Duct system

The ducting within the building must be mounted on vibration reducing pads to minimise vibration effect for residential and commercial spaces to comply with the vibration guidelines.

90 **Podium Planting**

All podium planting areas are to have a waterproofing membrane that can provide a minimum 10 year warranty on product. Protective boarding is to be installed to protect membrane from damage.

All podium planting areas to be provided with an adequate drainage system connected to the stormwater drainage system. The planter box is to be backfilled with free draining planter box soil mix.

If selected mulch is decorative pebbles/gravel, the maximum gravel pebble size is 10mm diameter

91 **Provision of Taps/Irrigation System**

The provision of common taps and/or an irrigation system is required to guarantee that all landscape works are adequately watered. The location of common taps and/or irrigation system must be implemented in accordance with the approved Landscape Plan.

92 **No Adverse Run-off Impacts on Adjoining Properties**

The design of the development shall ensure there are no adverse effects to adjoining properties as a result of flood or stormwater run-off. Attention must be paid to ensure adequate protection for buildings against the ingress of surface run-off.

Allowance must be made for surface run-off from adjoining properties. Any redirection or treatment of that run-off must not adversely affect any other property.

93 **Discharge of Accumulated Water**

Any water accumulating in excavations on-site or in the settlement ponds shall not be discharged to Council's stormwater system, unless all the following criteria are met:

- a) The concentration of suspended solids in the water to be discharged does not exceed 50 mg/L; and
- b) The pH of the water to be discharged is between 6.5 and 8.5; and
- c) The water to be discharged contains no visible oil or grease; and
- d) If alum has been used to reduce suspended solids, the concentration of aluminium in the water to be discharged does not exceed 0.055 mg/L; and
- e) The water to be discharged does not contain any substances known to be toxic to aquatic life; and
- f) The flow rate of discharged water does not exceed 55 litres per second in dry weather conditions, or is less than the capacity of the receiving stormwater drain; and
- g) A copy from a NATA accredited laboratory of sample test results for suspended solids and pH (and aluminium if applicable) confirming the water to be discharged meets criteria 1 and 2 (and criteria 4 if applicable) as stated above is submitted to Council's Environment Planning Team (phone 4227 7111; fax 4227 7277; email records@wollongong.nsw.gov.au, attention Environment Planning Team Manager); and

- h) Written permission is obtained from Council's Environment Planning Team prior to any discharge.

Alternatively, such waters are to be removed by tanker for disposal at a NSW Environment Protection Authority licensed waste facility.

94 **Protection of Public Places**

If the work involved in the erection or demolition of a building involves the enclosure of a public place or is likely to cause pedestrian/vehicular traffic in a public place to be obstructed or rendered inconvenient, or have the potential for conflict between pedestrians and vehicles:

- a) A hoarding or fence must be erected between the work site and the public place;
- b) an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place;
- c) the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in a public place;
- d) safe pedestrian access must be maintained at all times;
- e) any such hoarding, fence or awning is to be removed when the work has been completed.

95 **Copy of Consent to be in Possession of Person carrying out Tree Removal**

The applicant/developer must ensure that any person carrying out tree removal/vegetation clearance is in possession of this development consent and/or the approved landscape plan, in respect to the **trees/vegetation** which have/has been given approval to be removed in accordance with this consent.

- 96 The lighting of the premises must be directed so as not to cause nuisance to the owners or occupiers of adjoining premises or to motorists on adjoining or nearby roads.

97 **Importation soils to site**

Prior to importing any soils to site for the purpose of back-filling also requires validation testing following the EPA (1995) *Sampling Design Guidelines* to confirm suitability for the proposed land use.

98 **Dust Suppression Measures**

Activities occurring during the construction phase of the development must be carried out in a manner that will minimise the generation of dust.

99 **Asbestos – Removal, Handling and Disposal Measures/Requirements Asbestos Removal by a Licensed Asbestos Removalist**

The removal of any asbestos material must be carried out by a licensed asbestos removalist if over 10 square metres in area of non-friable asbestos, or if any type of friable asbestos in strict accordance with SafeWork NSW requirements (<<http://www.safework.nsw.gov.au>>).

100 **Asbestos Clearance Certificate**

The internal floor area affected or likely to be affected, by scattering of asbestos pieces, particles or fibres during demolition or cutting into the building, is to be cleaned by vacuuming by a contractor approved by SafeWork NSW. A Clearance Certificate to certify that the site area is free of asbestos is to be submitted to Council by a licensed asbestos assessor within fourteen (14) days of the completion of renovations (or prior to the Occupation Certificate being issued).

101 **Asbestos Waste Collection, Transportation and Disposal**

Asbestos waste must be prepared, contained, transported and disposed of in accordance with SafeWork NSW and NSW Environment Protection Authority requirements. Asbestos waste must only be disposed of at a landfill site that can lawfully receive this type of waste. A receipt must be retained and submitted to the Principal Certifying Authority, and a copy submitted to Council (in the event that Council is not the Principal Certifying Authority), prior to commencement of the construction works.

102 **Excess Excavated Material – Disposal**

Excess excavated material shall be classified according to the NSW Environment Protection Authority's Waste Classification Guidelines – Part 1: Classifying Waste (2014) prior to being transported from the site and shall be disposed of only at a location that may lawfully receive that waste.

103 **Protection of Excavations**

If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on adjoining allotment of land, the person causing the excavation to be made:

- a) must preserve and protect the adjoining building from damage; and
- b) if necessary, must underpin and support the building in an approved manner; and
- c) must, at least seven (7) days before excavation below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation.

104 All excavations and backfilling associated with the erection of a building must be executed safely and in accordance with appropriate professional standards.

105 **External Plant and Equipment**

All external plant such as air conditioners, compressors/pumps, exhaust systems and other equipment likely to emit noise shall have suitable noise attenuation so that the noise (LAeq(15min)) emanating from the operation of external plant and equipment does not exceed 5dB(A) above the background noise level (LA90(15min)) of the area at any boundary of the land.

Prior to the Issue of the Occupation Certificate

106 **Lot Consolidation**

The three (3) lots that comprise the parent parcel shall be consolidated prior to the release of an Occupation Certificate. The three (3) lots to be consolidated include the following:

Lot 1 DP 746944

Lot 1 DP 66347

Lot 1 DP 69724

107 *Deleted.*

108 **Heritage – Interpretation Works**

Prior to the release of the Occupation Certificate, the developer must ensure that all Interpretation outcomes and works recommended or proposed within the approved Interpretation Plan, are implemented on the site to the satisfaction of Council's Heritage staff. This should be verified in writing prior to the release of the final Occupation Certificate.

109 **Heritage – Photographic Recording**

The Principal Certifying Authority shall ensure that the Photographic Recording required by Condition 86 has been provided to Council's Heritage Staff prior to the issue of the final Occupation Certificate.

110 **Record of works – demolition and reconstruction of facade**

The heritage architect engaged is to provide a documented record of the works to Council on completion and a report setting out how the conditions of consent have been satisfied. This record of works, including the photographic record of works and report must be submitted to Council's satisfaction prior to issue of an Occupation Certificate.

111 **Completion of Engineering Works**

All engineering works within Council's road reserve or other Council owned or controlled land must be completed in accordance with the conditions of this consent and any necessary work to make the construction effective to the satisfaction of Council's Manager

Development Engineering, prior to the issue of the Occupation Certificate. The total cost of all engineering works shall be fully borne by the applicant/developer and any damage to Council's assets shall be restored in a satisfactory manner, prior to the issue of the Occupation Certificate.

112 Works-as-Executed Plans

On completion of any civil infrastructure works, the applicant must submit, to Council's Manager Development Engineering, the Works-As-Executed plans for any works within the road reserve or other Council owned or controlled land. A certificate shall also be submitted by a registered surveyor confirming that the survey is a true and accurate record. The WAE plans shall also be certified by an accredited engineer indicating that construction works have been built in accordance with the conditions of development consent.

113 Completion report for excavation adjacent to a Public Road

Prior to the issuing of the Occupation certificate, a report must be provided to Wollongong City Council and Principal Certifying Authority, prepared by a qualified Civil Engineer, NPER 3 accreditation with the Institute of Engineers Australia and experienced in structural design that:

- a) Certifies that all proposed retaining structures within the zone of influence of any Council assets including the road pavement, stormwater pipes and pits was constructed in accordance with the approved plans prepared in accordance to RMS Technical direction GTD 2012/001.
- b) Certifies that the monitoring of the site was carried out in accordance with the requirements of RMS Technical direction GTD 2012/001.
- c) Provides a post construction dilapidation survey, identifying the condition of Council assets and all land in the vicinity of the proposed works at the completion of works.

114 Fire Safety Certificate

A Fire Safety Certificate must be issued for the building prior to the issue of an Occupation Certificate. As soon as practicable after a Fire Safety Certificate is issued, the owner of the building to which it relates:

- a) Must cause a copy of the certificate (together with a copy of the current fire safety schedule) to be given to the Commissioner of New South Wales Fire Brigades, and
- b) must cause a further copy of the certificate (together with a copy of the current fire safety schedule) to be prominently displayed in the building.

115 Drainage

The developer must obtain a certificate of Hydraulic Compliance (using Council's M19 form) from a suitably qualified civil engineer, to confirm that all stormwater drainage has been constructed in accordance with the approved plans. In addition, full **works-as-executed** plans, prepared and signed by a Registered Surveyor must be submitted. These plans and certification must satisfy all the stormwater requirements stated in Chapter E14 of the Wollongong DCP2009. This information must be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

116 Retaining Wall Certification

The submission of a certificate from a suitably qualified and experienced structural engineer or civil engineer to the Principal Certifying Authority is required, prior to the issue of the Occupation Certificate or commencement of the use. This certification is required to verify the structural adequacy of the retaining walls and that the retaining walls have been constructed in accordance with plans approved by the Principal Certifying Authority.

117 Completion of Landscape Works

The completion of the landscaping works as per the final approved Landscape Plan is required prior to the issue of Occupation Certificate.

118 Redundant Crossings

Any existing vehicular crossings rendered unnecessary by this development must be removed and the footpath and normal kerb and guttering must be restored. This work shall be carried out by a Council recognized concrete contractor at the developer's expense and completed prior to the issue of an Occupation Certificate.

Operational Phases of the Development/Use of the Site

- 119 **Car Park Management Plan**
The car park management plan required by Condition 24 shall be implemented at all times.
- 120 **Car Parking Allocation Plan**
The car parking allocation plan required by Condition 25 shall be implemented at all times.
- 121 **Maintenance & Operation of Mechanical Parking System**
The mechanical parking system shall be regularly maintained to ensure that it remains operational at all times and operates with a lifting time of 40 seconds.
- 122 **Storage of Goods and Materials**
All goods, materials and equipment shall be stored within the building and no part of the land shall be used for purposes of storage.
- 123 **Fire Safety Measures**
All new and existing fire safety measures shall be maintained in working condition, at all times.
- 124 **Loading/Unloading Operations/Activities**
All loading/unloading operations are to take place at all times wholly within the confines of the site.
- 125 **Waste Management**
An adequate number of waste receptacles for both general rubbish and recyclable materials shall be placed strategically around the site, and collected on regular basis. Waste shall not be allowed to accumulate on the site.
- 126 **Waste Collection**
All waste collection is to be undertaken from within the site. On-street collection of waste is not permitted at any time.
- 127 **Restricted Hours of Operation**
The hours of operation for the development shall be restricted to 7.00 am to 6.00 pm Monday to Friday and 8.00 am to 6.00 pm on Saturday. Any alteration to the approved hours of operation will require separate Council approval.
- 128 **Noise Restrictions on Commercial Development**
The noise LAeq 15min emanating from Commercial developments must not exceed 5 dBA above the background noise level LA90 15min of the area at any boundary of the land.

Reasons

The reasons for the imposition of the conditions are:

- 1 To minimise any likely adverse environmental impact of the proposed development.
- 2 To ensure the protection of the amenity and character of land adjoining and in the locality.
- 3 To ensure the proposed development complies with the provisions of Environmental Planning Instruments and Council's Codes and Policies.
- 4 To ensure the development does not conflict with the public interest.