**AMENDMENTS TO DRAFT CONDITION OF CONSENT**

**DA-2024/50: 2 Myrtle Street, Botany**

| **Draft condition &**  **Proposed change** | **Comments from applicant** | **Comments from Council** |
| --- | --- | --- |
| 1. **Complaints**   Handling of complaints to be in accordance with Bayside Council's Complaints Management Policy (Ref: F14/311 ­ 19/198011 & F16/951 ­ PP19/20I) dated 13 November 2019. ~~Complaints handling register to be provided onsite and procedures will include:~~   * ~~The installation of a contact phone number at the front of the premises so that any complaints regarding the premises operation can be made~~ * ~~A permanent register of complaints is to be held on the premises which shall be reviewed monthly by staff to ensure any complaints are responded to. All complaints received shall be reported to management with initial action/investigation commencing within 7 days. The complainant should also be notified of the results and actions arising from the investigation. Records should be made available to Council's Officers when required.~~ | Leave only reference to Bayside Council's Complaints Management Policy. | Agreed |
| **8. Tree Removal**   1. The Applicant has consent to remove the following ON SITE trees.  * Tree 15A, 36, 37, 41, 48, 49, 50, ~~52­59~~  52-59, 65, 180A & ~~196 ­199~~ 196-199 | This should include 196A | Agreed; hyphens should be added to read: 52-59 & 196-199 |
| **9. Tree Retention**  The applicant shall comply with all recommendations, requirements, and management plans contained within the Arborist report (except as amended by other conditions of consent)., prepared by Tree Management Strategies, dated 02/10/2024 Trees to be retained are to be tagged with clearly visible marking tape at a height of approximately 2 metres from ground and numbered with the corresponding number in the Arborist Report.  ~~Trees to be retained are to be tagged with clearly visible marking tape at a height of approximately 2 metres from ground and numbered with the corresponding number in the Arborist Report.~~ | Condition 9 should be amended to deleted repeated final paragraph. | Agreed |
| **10. Tree Protection**  The following trees must be retained and protected at all times:  (i) On Site. 35, 38, 46, 47, 47A, 51, 53, 60, 61, 62, 63, 64, 178B, 179, 179A, 179B, 180 – 190 & 200-206  (ii) Adjacent Lots. Tree 14, 15, 16, 18, 19, 20, 21, 34, 39, 40, 43 & 45  (iii) Tree Transplanting. Consent is granted for the transplanting of trees 22-33. | This should include missing trees:  1-13, 17, 42, 44, 65A, 66-180, 191-194, | Agreed |
| **12(a)(iv)** **Swimming Pools – New Pools (modified)**   1. The design and construction of the swimming pool and associated fencing and equipment must comply with: 2. *Swimming Pools Act 1992*, and 3. *Swimming Pool Regulations 2018*, and 4. National Construction Code, and 5. ~~AS 1926.1 – Swimming Pool Safety – Safety Barriers for Swimming Pools, and~~ 6. *Protection of the Environment Operations Act 1997*. | This is typically not required for a class 9b building as it is a residential code, this will potentially have implications on the proximity of existing tree to the fence with regard to climbability. | Agreed. |
| 12(b)The swimming pool shall be designed and constructed in a manner ~~that does not allow water to be drained to the adjoining properties,~~ that ensures water over-topping the pool edge does not flow overland to adjoining properties. | This may have future implications should the connection not be accepted | Agreed. |
| **12(d)** The pool / spa shall not be filled until ~~safety fences~~ secure fencing has been completed in accordance with this consent and inspected by the Principal Certifier, and | This should be the standard for domestic pools. But a domestic pool has no requirements to make sure there aren’t any leaks. We have to test the pools to make sure the concrete is water-tight. And we would leave the finished pools filled (but fenced off for site safety) until just before commissioning to avoid thermal cycling the concrete. | Agreed. |
| **14 No intensification of activities**  No intensification of activities other than the ones subject to this approval shall occur on the premises without prior consent from Council. | activities are intensifying from a small seasonal pool to large scale 7 day a week operation. due to the scale of the development and new infrastructure- our learnings from Gardiner park - this statement should be removed or modified | Agreed. |
| **22(bb)** Bicycle storage should be in a secure area with bicycle racks/strong fixed points for owners to secure their bicycles effectively. Suggested this is changed to be advisory. | Clarification required over what constitutes a secure parking area, will parking to AS2890.3 suffice / alternatively relocated to advisory condition (Development Consent Advice). | Agreed; relocated to advisory conditions (Development Consent Advice). |
| **23**  ~~The wall along the western edge of the driveway (marked with a TOW 37.000) is to be reduced in length, such that the length is dictated only by the requirements of the Building Code of Australia (i.e., if the Building Code of Australia does not require the wall to be as long as depicted on the plans, then the length shall be reduced accordingly).~~ | Contains a copy and paste error from previous condition. | Agreed |
| 1. a) To extend an eastward outlook from the indoor aquatic centre, the glazing at the northern end of the eastern façade of the aquatic centre, is to be extended further to the south by an additional length of between 5 metres and 8 metres. The associated horizontal shade is to be extended by an equivalent length. | The 60KL above ground rainwater tank is proposed to be entirely screened to the eastern elevation by a 3.6m height solid metal wall, colour the match the adjoining Pool Hall elevation (Surfmist). The screening will allow both the rainwater tank, filtration equipment and the services connection to be concealed. The facade treatment change materiality at the Gymnasium glazing linking through to the Pool Hall glazing whilst maintaining a continuous datum. | 1. The applicant has not proposed changes to this condition, however the intent of the changes to both Condition 23(a) and 23(b) were verbally agreed. Amended wording is proposed within the draft conditions. The applicant has not yet viewed these amendments. |
| 1. b) To ensure that the extended eastward outlook from the indoor aquatic centre is unimpeded by the rainwater tank, the rainwater tank located on the eastern side of the aquatic centre buildings is to be relocated underground. Please refer to additional applicant commentary. | Additional comments: If the 60m3 rainwater tank is put underground there is other plant in the area which cannot be built underground: The treatment system for the storage tank; the heat pumps and hot water storage tanks; the cold water domestic system pumpset; the ladder access to the roof AC and PV plant. This all needs to be kept in a secure area; to prevent tampering, and to allow unfettered access if maintenance is required. The secure area is walled off from the north and east to reduce visibility of the plant from the parkland area, and to isolate the area for CCTV coverage. There is a secure gate on the outside, which is unlocked when the fire alarm goes off as this plant area has a delineated path for egress from the hall’s SE fire exit.  Even if the wall was removed we would still require security fencing around the plant area. This would be unsightly directly in front of the glazing, and it would make the “ugly” plant area more visible from the parkland zone. With the wall remaining the plant area just looks like an extension of the building.  Alternatively, if the 60m3 rainwater tank was built underground close to the OSD tank, we would have several aesthetic constraints greatly affecting the entrance to the site. To fit the 60m3 tank in this location with the OSD would require an enlarged area with no tree roots, removing several canopy trees which have been added to provide shade around the entrance or the car park. The associated plant would have to remain aboveground and close by the tank. This would create a similar unsightly plant area sitting in front of the building, visible from front-of-house. It would have to be secured, so the area would have to be fenced off from the public and no parking allowed over the top to maintain access in case of emergency. The back-of-house will have to retain some security apparatus as the access to the roof will remain at that location.  Less importantly, there are buoyancy problems with trying to build this 60m3 re-use tank underground, as the groundwater is fairly high and (during low rainfall periods) the tank is likely to be empty. The above-ground structure also provides some minor “head pressure” assistance as it feeds all of the toilets in the gym and pool hall. | Agreed; based upon agreement to amend (a). |
| **~~26(b)(ii)~~** ~~Details of any proposed WSUD elements. If raingardens are retained in the proposed size, these are to include large canopy trees,~~ *~~Melaleuca quiquenervia,~~* ~~or other suitable to raingardens. Otherwise these shall be reduced or removed, to prioritise canopy trees.~~ | Draft condition 26 (b) (ii) be removed based on the following,   * The raingardens have been adequately sized to suit the drainage areas from the carpark which provide biofiltration and therefore should not be reduced * The landscape planting plan proposes trees with significant canopy coverage assumed at a 15m diameter * Tree planting within the extent of the raingarden is not advised as the tree root growth will disrupt the different medium layers and will likely result in the diminished effectiveness over time. | Not agreed. The condition effectively indicates that further assessment of the landscape plan is required. Part of that further assessment includes consideration of canopy trees in the carpark. |
| **26(b)(iii)** Provided details of pavement treatment in parking areas, ensure the design delivers a contrast of paving materials to break up large sections of paving and to delineate pedestrian areas, entries, car parks, special use areas or transition zones between different uses. Pervious or semipervious paving is to be utilised wherever possible. | This has been previously addressed – a large part of  the carpark is on top of the large OSD – impervious pavers will not work. Additionally, traffic consultants and Council’s Traffic coordinator have confirmed that it is best practice to NOT delineate pedestrian areas.  Marking of a coloured pedestrian pathway gives a false sense of security for pedestrians in a shared surface scenario. The design recommendation is to provide dedicated pedestrian walkway delineated as marked crossing on a contrasting pavement. | Agreed to deletion of permeable paving.  Agreed to changes relating to pedestrian pathway. |
| **26(g)** All new areas and new furniture shall be fully accessible. New picnic tables and new chairs and any proposed new BBQ equipment shall have inclusive access. | Most of the picnic tables and barbeque areas are deep into the park. Is it possible to make all of these with “inclusive access” without paving concrete paths all through the park? | Agreed. |
| **26(k)** All trees shall be located within mulched landscaped beds except where this may interfere with the performance of an above ground stormwater system. | *Proposed alternate wording* - All proposed trees shall be located within mulched landscaped beds except where this may interfere with the performance of an above ground stormwater system, or where proposed trees are located within planter boxes or lawn areas. | Partly agreed. The condition is likely requiring mulch to trees within lawn areas. Condition to be amended to provide some intended flexibility. |
| **27 Landscape Maintenance Schedule**  ~~Prior the issue of the Construction Certificate, a Landscape Maintenance Schedule and Specifications must be submitted to, and approved by, the Director City Futures (or delegate) of Bayside Council. Maintenance Documentation is to cover a 12 month period to provide a guide to the landowner or occupier on how to best maintain the constructed landscaped areas; and include the following information: shrub pruning/trimming (frequency, plant requirements); Fertilising and pest control (soil testing, types, rate, frequency); Mulching, weeding and soil improvement (frequency, materials); Irrigation (checks, adjustments); tree maintenance (fertilising, mulching, tree stakes adjustments, special tree requirements); Maintenance of hard landscape elements (paving, edges, walls, pergolas, seats, and planter box walls); and planter boxes/roof gardens/green wall (specialised maintenance requirements).~~ | This is a repeat of item 26(e) Please delete and keep 26(e). | Agreed |
| 1. **Detailed Design Stormwater Management Plan (modified)** | Add comment at end of condition to enable flood storage/ mitigation tank as part of their overall stormwater and flooding management. | Agreed. |
| **42. Erosion and Sediment Control Plan.** | This is a repeat of item 29. | Agreed, delete 42. |
| **44 Geotechnical Certification**   1. Certify that the construction certificate plans and supporting documentation are satisfactory from a geotechnical perspective. | This clause is difficult to achieve. It requires a Geotechnical Engineer to provide certification of structural drawings, along with every other discipline involved in the design of this development. Surely the certification of structural drawings by a Structural Engineer would suffice. Would the certification by a Geotechnical Engineer be okay if it is limited to ground condition assumptions made by the Structural Engineer?  This clause could be written as, “certify that all ground conditions assumed in construction certificate plans are satisfactory from a geotechnical perspective,” as that would allow for the author of the geotechnical report to sign off that their provided information is reliable. The process would likely be for a smaller version of the geotechnical report to just list ground conditions, signed off by the Geotechnical Engineer.  Either that or change the clause to, “provide a Geotechnical Report on ground conditions and effects of construction on adjoining land,” if this clause is about protecting adjacent landowners. | Disagree with the comments that the condition requires a Geotech engineer to provided certification of structural drawings. The Geotech engineer will only be signing off from a “geotechnical perspective”  Propose standard condition remains as provided. |
| **53. Tree Offset Controls.**  The proposed development includes the removal of twenty-two (22) live trees. To offset the loss of canopy the applicant is required to replace the trees at a minimum 3:1 replacement ratio, therefore a ~~total~~ minimum of sixty-six (66) new trees shall be planted to offset the canopy loss for environmental reasons. | The condition currently only permits fewer plantings than proposed. | Agreed. |
| **56. Erosion and Sediment Controls in Place.**  Before any site work commences, the Principal Certifier must be satisfied the erosion and sediment controls in the Erosion and Sediment Control Plan are in place. These controls must remain in place until any bare earth has been restabilised in accordance with the *NSW Department of Housing Manual ‘Managing Urban Stormwater: Soils and Construction Certificate*’ (the Blue Book) (as amended from time to time). | This is (almost but not quite) a repeat of 55. | Agreed; delete 55. |
| 1. Tree Protection   (i) Prior to commencement of any work on site, in order to ensure that trees listed within condition 10(i) and 10 (ii) are protected against adverse conditions during demolition and construction, and the health and structural stability ensured, all Tree Protection Zones (TPZs) shall be established as follows:  ~~A. To protect and retain trees in accordance with AS4970­2009 protective fences consisting of chain wire mesh temporary fence panels with a height 1.8m shall be erected outside the dripline. The fence panels must be securely mounted . and braced to prevent movement. The area within the fencing must be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken, and~~  B. Protective fences at least 1.5 metres high erected, at the greater of the drip line or 1.5 metres from the trunk of each tree which is to be retained. The protective fences shall consist of para-webbing or chain wire mesh mounted on star pickets or similar metal posts, shall be in place prior to the commencement of any work on site and shall remain until the completion of all building and hard landscape construction, and | A & B contradictory  Remove A and keep B  There is already protection provided in 61(i)(B) which doesn’t provide the burden of a deep-watering program on trees which currently have no watering program. Para-webbing also allows better access for maintenance/inspection if the trees require it during the construction process. | Agreed |
| **68. Construction Activities – Minimise Pollution**   1. ~~Access to the site shall be restricted to no more than two 3m driveways.~~ Access to the site shall be restricted to the existing 10m car park driveways (at the end of Jasmine Street) and a temporary 15m construction driveway on Myrtle Street. Council’s footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of two metres to remove mud from the tyres of construction vehicles, and |  | Agreed |
| **69 Site Fencing**  The site shall be secured by an 1800mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points and open and secured in such a way as to not obstruct the public footway. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifier, prior to the demolition of the existing structures and commencement of building operations. | Given all the tree protection fencing close to the boundary, there will be a lot of clashing between the two types of protection. Which one gets priority? | Not agreed. Tree and construction fencing conditions establish minimum fence heights. They can be exceeded, which would avoid any inconsistency. |
| **79+80.  Dewatering.** | These seem like a repeat of item 74. | Agreed, delete 74. |
| **86. Support of Adjoining Structures.** | This is a repeat of item 67. | Agreed, delete 86. |
| **91. Construction Activities – Minimise Pollution.** | This is a repeat of item 68. | Agreed, delete 91. The Roman dot points to (f) also require some minor reformatting to ensure they are ready as part of (f). |
| **92. Site Fencing.** | This is a repeat of item 69. | Agreed, delete 92. |
| **101 – Public facilities inspection**  An Independent Comprehensive Inspection of all new public use facilities for playgrounds and playground surfacing, water slides equipment, play zone, and playground surfacing (Including soft fall) shall carried out by a suitably qualified person. The outcome of the review must confirm that all public use facilities meet relevant Australian standards as applicable to all installations, with details provided to the Principal Certifier prior issue of any Occupation Certificate. | To be confirmed if the is an external consultant engaged by Council | Yes, independent from Council. |
| **Item 107 – tanking / waterproofing certification**  Prior to the issue of any Occupation Certificate, an Engineer registered with the National Engineering Register (NER) shall certify that the tanking and waterproofing for the rainwater tanks and ~~flood storage tank~~ has been constructed in accordance with the approved design and specification. The certification is to include an inspection and evaluation of the works. | Remove reference to flood storage tank (will not have any waterproofing). Should be only rainwater tanks. | Agreed. |
| 138 **Operation of Vehicular Premises**   1. The maximum size of vehicles accessing the site shall be limited to an ~~12.5m long HRV~~ 14.5m long Vehicle (as denoted in AS2890.2). | 138(d) would preclude school buses from entering the site. | Condition 138(d) does permit school buses which are the size of a HRV, for further clarity the condition can include the following words “and a school bus” at the end of the condition. |