

ORDER

COURT DETAILS

| | |
|-------------|------------------------------------------------------|
| Court | LAND AND ENVIRONMENT COURT OF NEW SOUTH WALES |
| Division | Class 1 |
| Registry | Level 4, 225 Macquarie Street, Sydney |
| Case number | 10949 of 2014 |

TITLE OF PROCEEDINGS

| | |
|------------|----------------------------------------|
| Applicant | Melanie Jones and Saeed Moazzam |
| Respondent | Mosman Council |

DATE OF ORDER

| | |
|--------------------|---------------|
| Date made or given | 24 April 2015 |
| Date entered | |

TERMS OF ORDER

The Court notes that the parties or their representatives have reached agreement at a conciliation conference held pursuant to s 34 of the *Land and Environment Court Act 1979*, presided over by Commissioner O'Neill on 3 February, 2015, as to the terms of a decision in the proceedings that would be acceptable to the parties (being a decision that the Court could have made in the proper exercise of its functions).

By consent, the Court makes the following orders:

1. The applicant is granted leave to amend Development Application No. 8.2014.39.1 in accordance with the plans referred to in Condition 1 of Annexure "A" hereto.
2. The applicant shall pay the respondent's costs pursuant to section 97B of the *Environmental Planning and Assessment Act 1979* agreed in the sum of \$7,000.00, such costs to be paid within 28 days of orders being made in accordance with this agreement.
3. The appeal is upheld.
4. Development Application No. 8.2014.39.1 relating to the land at 173 Spit Road, Mosman, for demolition of existing dwelling and construction of 4 units, is approved, subject to the conditions set out in annexure "A" to this agreement.

SEAL AND SIGNATURE

Court seal

Signature

Capacity

Date

24 April 2015

Annexure 'A'**Conditions of Consent****Jones & Anor v Mosman Council****APPROVED PLANS AND DOCUMENTATION**

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

| Drawing Nos. | Date of drawing | Prepared by |
|---------------------------|------------------------|------------------------------|
| 1306.L&E.01 rev A | 24/2/15 | Sandberg Schoffel Architects |
| 1306.L&E.02 rev D | 27/3/15 | Sandberg Schoffel Architects |
| 1306.L&E.03 rev D | 27/3/15 | Sandberg Schoffel Architects |
| 1306.L&E.04 rev E | 27/3/15 | Sandberg Schoffel Architects |
| 1306.L&E.06 rev C | 27/3/15 | Sandberg Schoffel Architects |
| 1306.L&E.08 rev C | 27/3/15 | Sandberg Schoffel Architects |
| 1306.L&E.07 rev C | 27/3/15 | Sandberg Schoffel Architects |
| 1306.L&E.12 rev A | 24/2/15 | Sandberg Schoffel Architects |
| 1306.L&E.14 rev B | 27/3/15 | Sandberg Schoffel Architects |
| 1306.L&E.16 rev C | 27/3/15 | Sandberg Schoffel Architects |
| | | |
| 1306.L&E.20 rev A. | 27.3.15 | Sandberg Schoffel Architects |
| Landscape Plan L-01 rev G | 30/03/15 | Ecodeign |
| MSPI 173-DA Amendment C | 03/03/15 | WaterPlan P/L |
| | | |

| Document title | Date of document | Prepared by |
|-------------------------------------------------------|------------------|------------------------------|
| Review of Vehicular Access & Car Parking Arrangements | 17 March 15 | Varga Traffic Planning P/L |
| Basix Certificate No. 522084M-03 | 11 March 2015 | Sandberg Schoffel Architects |
| Access Report | 5 March 2015 | ILC Access |
| Road Traffic Noise Assessment | March 2015 | Noise & Sound Services |

Compliance with Other Authority Requirements - Roads & Maritime Services

2. RMS has previously resumed and dedicated a strip of land as road along the Spit Road frontage of the subject property, as shown by grey colour on the attached aerial [marked "AA"]. RMS has previously acquired an easement for support within the frontage of the subject property, as shown by brown colour on the attached aerial [marked "BB"]. All new buildings and structures are to be erected clear of the Spit Road road reserve and the identified easement (unlimited in height or depth). Access to the RMS easement is not to be denied and the integrity of the easement is not to be compromised.
3. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system along Spit Road are to be submitted to Roads and Maritime for approval, prior to the commencement of any works on site.

Details should be forwarded to: Sydney Asset Management, Roads and Maritime Services, PO Box 973 Parramatta CBD 2124.

A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2766.

4. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping.
5. **Deleted.**
6. All vehicles shall enter and exit the site in a forward direction.
7. All vehicles shall be wholly contained on site before being required to stop.
8. The driveway width shall be a minimum of 3 metres wide with 0.5 metre splay at the kerb line as stated in Roads and Maritime Guide to Traffic Generating Developments.
9. The redundant driveway shall be removed and replaced with kerb and gutter to match existing. The design and construction of the gutter crossing off Spit Road shall be in accordance with Roads and Maritime requirements. Details of these requirements

should be obtained from Roads and Maritime Project Services Manager, Traffic Projects Section, Parramatta on 8849 2496.

Detailed design plans of the proposed gutter crossing are to be submitted to Roads and Maritime for approval prior to the issue of an Occupation Certificate and commencement of any road works.

It should be noted that a plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approved road design plans by Roads and Maritime.

10. A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a Construction Certificate. The applicant should note the provision of a work zone will only be considered outside of the existing clearway times and other associated parking restrictions.

The above referenced document including aerial photographs can be copied from Council's DA Tracker at www.mosman.nsw.gov.au. DATracker reference: Submission 173 Spit Road 8.2014.39.1 from Roads and Maritime Services dated 3 April 2014.

Amended Plans - Parking Layout

11. Deleted.

PRESCRIBED CONDITIONS

The following prescribed conditions apply in accordance with Division 8A of the *Environmental Planning and Assessment Regulation 2000*.

Compliance with the Building Code of Australia

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

Home Building Act

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

Signs for Building and Demolition Sites

14. A sign must be erected in a prominent position on any work site on which building work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work; and
- (b) showing their name of the person in charge of the work and a telephone number at which that person may be contacted outside work hours; and
- (c) stating that unauthorised entry to the work site is prohibited.

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

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

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

Shoring and Adequacy of Adjoining Property

- 14A. If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must at the person's own expense:

- (a) protect and support the adjoining premises from possible damage from the excavation, and
- (b) where necessary, underpin the adjoining premises to prevent any such damage.

PRIOR TO THE RELEASE OF THE CONSTRUCTION CERTIFICATE

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

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

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

Construction Certificate Application Plans

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

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

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

Dilapidation Report – Council Assets

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

Dilapidation Report – Private Assets

17. The applicant shall supply Council with a dilapidation report for the adjoining properties at 171 and 175 Spit Road which documents and photographs the condition of buildings and improvements on those properties. The dilapidation report shall be submitted as a PDF in Adobe format or in A4 format. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of nominated properties. Council shall be provided with a list of owners to whom a copy of the report has been provided.

Excavation, Backfilling and Support for Neighbouring Buildings

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

Retaining Walls

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

Sydney Water

20. The approved plans must be submitted to a Sydney Water Quick Check agent to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easement, and if any requirements need to be met. Plans will be appropriately stamped.

Please refer to the web site www.sydneywater.com.au or telephone 13 20 92 for:

- Water Quick Check agent details – see Building and Developing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets – see Building and Developing, then Building and Renovation.

Materials & Finishes

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

Access, Mobility & Adaptable Housing

22. To provide suitable access for people with disabilities, the development shall comply with Disability (Access to Premises – Buildings) Standards 2010. Details demonstrating compliance must be submitted with the Construction Certificate application.
23. A continuous and accessible path of travel, designed in accordance with Australian Standard 1428.1, shall be provided between the entrance to the premises and any disabled car parking space. Details demonstrating compliance must be submitted with the Construction Certificate.

Fire Safety

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

Long Service Levy

25. In accordance with Section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant shall pay a long service levy at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Mosman Municipal Council for any work costing \$25,000 or more. To pay the levy online go to <https://levy.lspc.nsw.gov.au/>. To pay the levy in person at either the Long Service Payments Corporation or Mosman Municipal Council you will need to complete the Levy Payment Form available from Council or online at <https://levy.lspc.nsw.gov.au/>.

Security Deposit

26. A cash deposit or bank guarantee to the value of \$21,220.80 in favour of Council shall be provided for the making good of any damage caused to Council property and to ensure the satisfactory completion of any works required to be undertaken outside the property boundary. A request for a refund of unused funds (less an inspection fee) may be made following the completion of all works, both inside and outside the property boundary, and an inspection of the site by Council.

Section 94 Contribution

27. Pursuant to Section 94A of the Environmental Planning & Assessment Act 1979, a monetary contribution must be paid to Council for the purpose of purchasing and embellishing public open space if the value of works exceeds \$100,000.00.

To enable Council to determine whether a contribution is payable and if so what amount, a 'Cost Summary Report' form must be completed if the value of work is less than \$1,200,000.00 or a 'Detailed Cost Report' form completed by a member of the Australian Institute of Quantified Surveyors if the value of work is \$1,200,000.00 or greater. Copies of these forms are attached to this consent and can also be obtained from the 'Policies and Forms' section of Council's website at

www.mosman.nsw.gov.au.

Contribution rates may be indexed by use of the Consumer Price Index.

This condition is imposed under Mosman Municipal Council's Mosman Section 94A Development Contributions Plan 2012. The Plan may be inspected at Council's offices within the Civic Centre, Mosman Square, Mosman.

BASIX Certificate

28. The applicant must include copies of any relevant BASIX certificates as part of the application for a Construction Certificate, and all items nominated in the subject BASIX certificate must be specified on the plans submitted with the application.
29. Where any conditions of this consent affect the commitments specified in the submitted BASIX Certificate, a revised BASIX Certificate is to be prepared to ensure energy efficiency targets are still achieved.

Waste Management

30. To allow for sustainable waste management, a completed Site Waste Minimisation and Management Plan (SWMMP) shall be submitted in accordance with the Mosman Waste Minimisation Policy 2012. A copy of the Mosman Waste Minimisation Policy 2012 including a SWMMP template can be found on Council's web site www.mosman.nsw.gov.au.

Erosion and Sedimentation Control Plan

31. An erosion and sedimentation control plan in accordance with the NSW Government's policy *Managing Urban Stormwater: Soils and Construction* (also known as The Blue Book) is to be submitted and approved by the Principal Certifying Authority prior to the issue of the Construction Certificate.
32. Erosion and sedimentation controls shall be installed prior to commencement of any works on the site (site works) in order to prevent the discharge of sediment from the site. The controls shall be installed in accordance with the Erosion and Sedimentation Control Plan for the site and the NSW Government's policy *Managing Urban Stormwater: Soils and Construction* (also known as The Blue Book).
33. To limit the tracking of material onto the street from vehicles and plant equipment, a site access driveway shall be provided prior to the commencement of site works consisting of 40mm aggregate made from either recycled concrete, blue metal or quartzite gravel. The layer of aggregate material shall be a minimum of 150mm deep, 2m wide and 5m long.

Noise

34. A Noise Impact Statement shall be prepared by a suitably qualified Acoustic Consultant addressing but not be limited to the following matters:
 - a. the identification of sensitive noise receivers potentially impacted by the proposal;
 - b. the quantification of the existing acoustic environment at the receiver locations (measurement techniques and assessment period should be fully justified and in accordance with the relevant Australian Standards and the NSW EPA requirements)

- c. details of any acoustic control measures that will be incorporated into the proposal;
- d. the formulation of suitable assessment criteria;
- e. the identification of all noise that is likely to emanate from items of plant and other movable equipment including 2 mechanical car-stacking units, gates roller doors security items ventilation system/air conditioning system and the subsequent prediction of resultant noise at the identified sensitive receiver locations from the operation of the premises;
- f. a statement certifying that the development is capable of operating without causing a nuisance.

Tree Replacement

35. The proposed *Corymbia* sp shall be planted at a minimum 200 litre pot size & deep soil to grow in.

Note: Refer to BASIX "Table D2.1 Indigenous Plant List for Mosman" or Council's "Guide to Native Plant Species for Mosman Gardens" for a list of appropriate species.

Screen Planting

36. To provide privacy for neighbouring properties, the proposed screen planting shall be extended to be adjacent to the proposed decks, on both the northern and southern boundaries. The screen planting shall be planted at minimum 1 m spacings and shall be provided with a minimum 300mm width garden bed. The proposed *Bambusa flexuosa* shall be substituted for *Bambusa multiplex*, *Alphonse Karr* or *Bambusa textilis Gracillis*. The screen planting is to be in accordance with the landscape plan referenced in condition 1.

Excavation, Backfilling and Support for Neighbouring Buildings

37. A report shall be prepared by a practicing Geotechnical Engineer and submitted to Council or the Accredited Certifier detailing the structural condition of adjoining structures I property and their ability to withstand the proposed excavation, backfilling and construction. The report must investigate site and soil conditions and outline any recommended measures to ensure that no damage will occur to the structures I property during or subsequent to the carrying out of works.

Drainage

38. Stormwater shall be directed to Council's Stormwater system. Detailed drainage plans shall be submitted with the Construction Certificate application and certified as complying with Council's "Stormwater Management in Mosman" by a Civil Engineer with membership of the Institute of Engineers Australia or who is eligible to become a member and has appropriate experience and competence in the related field.

Rainwater Re-Use System/Onsite Detention

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

member and has appropriate experience and competence in the related field. Where located below a driveway or built structure, the engineer is to certify that the on site detention system has been designed to withstand all loads likely to be imposed on it.

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

Driveway

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

Construction Traffic Management Plan

42. To minimise disruption to and ensure reasonable safety for surrounding public and private property during site works, a Construction Traffic Management Plan shall be submitted to and approved by Council's Traffic Committee. The plan is to address matters raised in Council's Guide for Construction Traffic Management Plans which is available on Council's website at www.mosman.nsw.gov.au.

Notes:

- (a) Council's Traffic Committee meets once every two months. To avoiding delays in the commencement of works early lodgement is recommended;
- (b) An application fee of \$520 per site for Construction Traffic Management Plans applies. When assessment is required within 7 days, the required fee is \$1,700 per site; and
- (c) Fees will be indexed by use of the Consumer Price Index and the actual amount to be paid will be determined at the date of payment. You may contact Council on 99784000 prior to payment to confirm current figures.

PRIOR TO THE COMMENCEMENT OF SITE WORKS

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

Notice of Intent to Commence Site Works

43. In accordance with Section 81A(2) of the Environmental Planning and Assessment Act 1979, no site works (including building works, demolition, excavation or the removal of vegetation) are to commence until:

- (i) the Construction Certificate has been issued;
- (ii) the person benefiting from the consent has appointed a Principal Certifying Authority (PCA);
- (iii) in instances where Council is not the PCA, the PCA has, no later than 2 days before the building work commences, notified Council of his or her appointment and notified the person benefiting from the consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work;
- (iv) the person benefiting from the consent, if not carrying out the work as an owner-builder has:
 - appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - notified the PCA of any such appointment, and
 - unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work; and
- (v) the person benefiting from the consent has given Council 2 days' notice of the person's intention to commence the erection of the building.

Construction Hoarding or Fencing

44. If site or building works will:

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

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

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

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

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

Public Liability Insurance

- 45. Public liability insurance to the value of \$5,000,000 must be taken out by the builder or owner to protect any person, firm or company from injury, loss or damage sustained as a consequence of the carrying out of site works, including all excavation, demolition and construction works. A copy of the policy must be provided to Council or the Accredited Certifier.

Protection of Landscape Features

- 46. To limit the potential for damage to the existing Eucalypt sp & Brachychiton in the rear garden to be retained, tree protection measures are to be installed in accordance with Australian Standard 4970--2009 Protection of Trees on Development Sites prior to the commencement of site works, in accordance with the following:

- (a) No construction or excavation (including trenching for drainage) shall occur within the structural root zone of any retained and protected tree.

- (b) No ground level changes within the canopy zone of the Existing Eucalypt in the rear garden, hence the proposed retaining wall will need to be deleted or relocated.

- (c) The building contractor shall ensure that at all times during site works no activities, storage or disposal of materials shall take place within the canopy zone of trees to be retained.

- (d) Landscape works in the vicinity of the trees must be sympathetic to tree retention and existing ground levels within the tree protection zone must remain unchanged. Where tree roots are uncovered that are between 20-50mm diameter they shall remain in place until they are cleanly pruned and treated with a root hormone compound by a qualified arborist.

- (e) All pruning works including the removal of deadwood is to be undertaken in accordance with Australian Standard AS 4373-1996 Pruning of Amenity Trees and the work is to be undertaken by an experienced and qualified arborist.

Trunk Protection

- 47. To limit the potential for damage to trees to be retained, trunk protection measures must be installed for the following tree (s):

| Species | Location |
|----------------|---------------|
| Eucalyptus sp. | Rear SE Comer |

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

DURING SITE WORKS / CONSTRUCTION

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

Protection of Landscape Features

48. To minimise disturbance to retained trees identified as the existing Eucalyptus sp in the SE corner of the site and the Brachichyton sp in the north-east corner of the site, no excavation shall take place within the structural root zone, measured as a radius from the trunk of each tree. Excavation may occur between the structural root zone and tree protection zone but only by hand under the supervision of an experienced arborist or tree surgeon.

In the event that major structural or feeder roots (>50mm diameter) are encountered within the tree protection zone, the arborist is to recommend and or implement appropriate measures to ensure the retention of the tree. If these measures involve structural alterations to the building or work, such measures must be certified by a practicing Structural Engineer that the modified plans/details comply with the relevant Building Code of Australia and/or Australian Standards. (Note: Council's Tree Management Officer may be contacted for advice regarding appropriate tree protection measures)

Arborist Inspections

49. The applicant must engage a suitably qualified and experienced arborist (Australian Qualification Framework level 5 or above) to assess the impact of the proposed works and employ best practices (e.g. minimise compaction, soil build up and or excavation within tree protection zone*) to ensure the longevity of trees to be retained. The arborist is to attend on site during critical stages of excavation and construction works within the vicinity of trees to be retained and is to record the following information;
- the methods of excavation or construction used to carry out works;
 - any damage sustained by the tree/s as a result of the works;
 - any subsequent remedial works required to be carried out by the arborist as a result of the damage; and
 - any future or on-going remedial work required to be carried out to ensure the long term viability of the tree.

*tree protection zone = 12 x Trunk diameter 1400mm from ground level (measured as a radius from the trunk)

Street Tree

50. One street tree Eucalyptus sideroxylon shall be installed and maintained through establishment in keeping with Council's Street Tree Master Plan. The street trees shall be planted at a minimum pot size of 100 Lt on the council verge in front of the subject site, to replace the existing tree in poor health.

Council Property

51. Any works carried out to Council owned property or infrastructure as a result of this consent are to be undertaken in accordance with Council specifications; Le "Specification For Concrete Kerb & Gutter, Footpaths, Vehicle and Kerb Crossings & Concrete Converters", "Public Domain Improvement Program", "Specification For Brick Paving", "Specification For Stormwater Drainage Construction" or "Specification For Asphalt Pavement Construction".

Construction Traffic Management Plan

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

Rainwater Re-Use System

53. To ensure proper installation of the rainwater re-use tank, all work is to be undertaken in compliance of Sydney Water's "Guidelines for Rainwater Tanks in Residential Properties" and "Rainwater Tanks, Information For Plumbers" and the NSW Code of Practice: Plumbing and Drainage. A licensed plumber must supervise all plumbing work.
54. For safety purposes, the tank and the fittings must be labelled "RAINWATER, NOT SUITABLE FOR DRINKING".
55. To ensure stormwater and drainage objectives continue to be achieved and to promote awareness of the rainwater re-use system, a plaque measuring no less than 400mm by 200mm shall be permanently attached and prominently displayed within the immediate vicinity of the rainwater tank advising occupiers of the existence of the rainwater tank and that the device is not be altered without prior approval from Mosman Council.
56. For health reasons, a first-flush-by-pass device must be installed allowing the first 1 mm of initial runoff to bypass the tank.

Driveway

57. The redundant driveway shall be reinstated with kerb, footpath and suitably landscaped. Materials must be in accordance with Mosman Council's "Specification For Concrete Kerb & Gutter, Footpaths, Vehicle and Kerb Crossings & Concrete Converters".
58. The levels at the boundary alignment of the property along the Spit Road frontage shall be defined by the existing levels.
59. **Deleted.**

Car Parking

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

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

Demolition

61. All demolition work must be carried out in accordance with the provisions of Australian Standard 2601-2001: The Demolition of Structures.

Asbestos Material

62. Where asbestos material shall be removed or disturbed as a result of any proposed demolition, alteration or addition, all work must be carried out by a person licensed under Chapter 10 of the Occupational Health and Safety Regulation 2001 and undertaken in accordance with the requirements of clause 29 of the Protection of the Environment Operations (Waste) Regulation 2005. All asbestos to be removed must be disposed of at a tip recommended by the NSW Environment Protection Authority and under no circumstances shall be re-used or sold.

Construction within Boundary

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

Site Work Hours

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

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

Construction Noise

65. To ensure reasonable acoustic amenity for surrounding properties is maintained during construction of the building, the works shall be conducted in accordance with the requirements of NSW Interim Construction Noise Guideline for building sites.

Shoring and Adequacy of Adjoining Property

66. All excavations and backfilling shall be limited to that required in accordance with the approved plans only and must be executed safely and if necessary properly guarded in accordance with appropriate professional standards to prevent them from being dangerous to life or property. At least 7 days before excavating, give notice of an intention to excavate to the adjoining owner and furnish particulars to the owner of the proposed work.

Erosion and Sedimentation Controls

67. Erosion and sedimentation controls must be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.

68. All stormwater runoff must be intercepted and diverted from areas susceptible to erosion through temporary earth banks or other drainage methods. The diversion is not to direct waters onto adjoining properties.
69. **Deleted.**
70. **Deleted.**

Waste Management

71. Waste management during the construction phase shall be undertaken in accordance with the Site Waste Minimisation and Management Plan and in accordance with the Mosman Waste Minimisation Policy 2012. A copy of the Mosman Waste Minimisation Policy. 2012 can be found on Council's web site www.mosman.nsw.gov.au.

Council Property

72. The land and adjoining areas shall be kept in a clean and tidy condition at all times. No construction vehicles, building materials, waste, machinery or related matter shall be stored on the road or footpath for the duration of works unless separate approval has been obtained from Council's Traffic Committee for the establishment of a Construction Zone. Under no circumstances will any person be allowed to mix or dispose of concrete, mortar or slurry within Council property.

Utility Services

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

Private Open Space Areas

74. Natural ground levels of private open space areas must not be altered to ensure adjoining properties are not adversely affected in terms of stormwater runoff or privacy.

Protection of Landscape Features

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

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

Tree Preservation

76. All street trees and trees on private property that are protected under Clause 5.9 of Council's Local Environmental Plan 2012 and the Residential Development Control Plan, shall be retained except where Council's prior written consent has been obtained, or where after approval of the relevant Construction Certificate, trees stand within the envelope of approved buildings or within the alignment of approved permanent paved vehicular access roads and parking areas.

Leighton Green Cypress

77. To reduce the potential for adverse amenity effects such as overshadowing, loss of views, and loss of plant diversity, Leighton Green Cypress Cupressocyparis leylandii or any of its cultivars, shall not be planted on the site for the life of the development. Further information on Leightons Green Cypress may be obtained from Council or viewed on its web site at <http://www.mosman.nsw.gov.au> and then under "Environment" and "Trees". In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Siting, Height and View Loss

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

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

Acoustic

79. To ensure reasonable acoustic amenity for residents is maintained, all recommendations made in the acoustic report prepared by Noise & Sound Services dated March 2015 accompanying the application which require specialised acoustic treatment of the building shall be complied with and maintained.

Construction Hoarding or Fencing

80. Any construction hoarding or fencing is to be maintained in good order throughout the life of the fence.

Lighting

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

Site Facilities

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

Residential Waste and Recycling Storage Area

For safety, amenity and maintenance reasons, the waste and recycling storage area must be constructed to the following standards:

- The gradient of the floors and the gradient of any associated access ramps must be sufficiently level for the purpose of emptying containers;

- Designed so that no odours emanate from the storage of waste; and
- Designed so that bins for recyclable materials are kept separate from (but close to) general waste bins - so that the potential for contamination of recyclable materials is minimised.

Approved Plans

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

Critical Stage Inspections

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

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

Notes: Records of the above critical stage inspections will be required to be submitted prior to the release of the Occupation Certificate – see later conditions of consent. If you intend engaging Council to undertake the inspections, please telephone the area Building Surveyor to arrange a suitable time.

Fencing

85. To reduce the visual impact of fencing forward of the building line the spacing between horizontal slats shall be no less than 50% of the width of the slat when viewed from directly in front.

Materials & Finishes

86. Roofing materials must be of low glare and reflectivity.

BASIX Certificate

87. To promote energy efficiency, the development is to be carried out in accordance with the commitments contained in the BASIX Certificate dated 11 March 2015.

PRIOR TO THE RELEASE OF THE OCCUPATION CERTIFICATE

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

Where a condition of consent is precedent to the issue of an Occupation Certificate in either part or full that condition shall be satisfied prior to the issue of the certificate.

Follow-up Arborist's Report

88. As part of the ongoing assessment of the trees to be retained, the arborist engaged by the applicant is to assess their health and any impacts suffered by them as a result of the proposed approved development. Findings are to be compiled in a detailed report to be provided to Council at the completion of construction and prior to the release of the Occupation Certificate which documents the following:
- the methods of excavation or construction used to carry out works;
 - any damage sustained by the tree/s as a result of the works;

any subsequent remedial works required to be carried out by the arborist as a result of the damage; and any future or on-going remedial work required to be carried out to ensure the long term viability of the trees.

Car Wash

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

Bicycle Parking

90. To encourage and promote the use of sustainable transport modes, secure bicycle parking/storage must be provided to accommodate at least one bicycle. The facility must be provided in a suitable location which allows safe and easy access and should be designed and installed in accordance with AS 2890.3-2004 - Parking Facilities - Bicycle Parking Facilities.

On-Site Detention/Rainwater Re-use System

91. So as Council has accurate records of the stormwater system to aid with catchment management functions, work-as-executed details of the on-site detention system or rainwater re use tanks prepared by a Civil Engineer with membership of the Institute of Engineers Australia or who is eligible to become a member and has appropriate experience and competence in the related field, demonstrating that the required storage and discharge volumes have been constructed in accordance with the design requirements and Council's policy for Stormwater Management in Mosman are to be provided to Council. The details must show the invert levels of the on-site detention

system or rainwater re use tanks as well as the pipe sizes and grades. Any variations to approved plans must be shown in red and supported by calculations.

92. To ensure that future owners are made aware of their responsibilities with respect to the on-site detention system or rainwater re use tanks, a positive covenant shall be created on the title of the allotment requiring that the owner(s) maintain and keep in working order the on-site detention system or rainwater re use tanks, unless otherwise approved in writing by Mosman Council.

A fee of \$125.00 applies (GST-inclusive) for the checking, approval and execution of the Positive Covenant by Council and must accompany the Positive Covenant when lodged with Council.

The terms of the positive covenant shall read:

(i) In this Positive Covenant "detention system or rainwater reuse system" shall mean the detention system or rainwater re use system approved by Mosman Council pursuant to Development Consent No. 8.2014.369.1 or any modification thereof approved by Mosman Council in writing.

(ii) The Registered Proprietors will at their own expense well and sufficiently maintain and keep in good and substantial repair and working order any detention system/rainwater re use system which exists from time to time on the land.

(iii) The Registered Proprietors shall not remove the detention system/rainwater reuse system without the prior consent of Mosman Council.

(iv) The Registered Proprietors hereby agree to indemnify Mosman Council from and against all claims, demands, actions, suits, causes of action, sum or sums of money, compensation damages, costs and expenses which Mosman Council or any other person may suffer or incur as a result of any malfunction or non-operation of any such detention system/ rain water re use system arising from any failure of the Registered Proprietors to comply with the terms of this Covenant.

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

Record of Inspections Carried Out

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

The record must include details of:

- the development application and construction certificate number;
- the address of the property at which the inspection was carried out;
- the type of inspection;
- the date on which it was carried out;

- the name and accreditation number of the certifying authority by whom the inspection was carried out; and
- whether or not the inspection was satisfactory in the opinion of the certifying authority who carried it out.

Car Parking

94. Parking spaces must be allocated to each unit in accordance with the provisions and requirements of Council's Development Control Plan.
95. Parking and manoeuvring areas shall be used solely for such purposes.
96. **Deleted.**

BASIX Completion Receipt

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

Sydney Water

98. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Make early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au see Building and Developing, then Developing your Land, Water Servicing Coordinator or telephone 13 20 92.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development or release of the Subdivision Certificate, whichever occurs first.

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

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

Fire Safety

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

Visitor Parking Sign

101. A sign legible from the street, shall be permanently displayed to indicate that visitor parking is available on the site. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

Noise

102. The operation of mechanical plant or other plant items must be certified by a suitably qualified person as to achieving the criteria stated in the noise criteria conditions of consent 112 and 113.

PRIOR TO OCCUPATION

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

Compliance Certificates and Inspection Records

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

Occupation Certificate

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

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

DURING OCCUPATION

The following condition must be satisfied during occupation of the development.

Landscape Maintenance

105. Landscaping provided shall be maintained for the life of the development. Where vegetation approved as part of this consent dies, it must be replaced with new landscaping that achieves a similar height and form to that approved under the landscape plan forming part of this consent.

Occupation

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

Car Parking

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

Acoustic

108. To ensure reasonable acoustic amenity is maintained, all recommendations made in the acoustic report prepared by Noise & Sound Services dated March 2015 accompanying the application which require specialised acoustic treatment shall be complied with.

Fire Safety

109. An annual fire safety statement (and where necessary supplementary fire safety statements) prepared in accordance with Part 9 Division 5 of the Environmental Planning & Assessment Regulation 2000 must be issued by the owner. Copies of each of the annual final fire safety statement, supplementary fire safety statements and the fire safety schedule must be (1) supplied to Council, (2) forwarded to the Fire Commissioner and (3) prominently displayed in the building.
110. Fire safety measures provided within the building must be maintained in good working order.

Noise

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

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

Ventilation

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

ADVICE TO APPLICANTS

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

- i. Headings such as “Prior To The Release Of The Construction Certificate” together with bolded notes that immediately follow, form part of this Notice of Determination. Conditions under the respective headings shall be read in the context of the heading and note.
- ii. The applicant shall consult with relevant public utility providers and meet any costs imposed by those providers for alterations to mains or services required as a consequence of this approval.
- iii. Other public authorities may have separate requirements and should be consulted in the following respects:
 - Australia Post for the positioning and dimensions of mail boxes in new commercial and residential developments;
 - AGL Sydney Limited for any change or alteration to gas line infrastructure;
 - Ausgrid for any change or alteration to electricity infrastructure or encroachment within transmission line easements;
 - Telstra, Optus or other telecommunication carriers for access to their telecommunications infrastructure.
- iv. This decision does not ensure compliance with the Commonwealth Disability Discrimination Act 1992. Applicants may wish to investigate their potential for liability under that Act.
- v. Failure to comply with the relevant provisions of the Act and/or the conditions of this consent may result in the serving of penalty notices or legal action through the Land and Environment Court.
- vi. In accordance with section 81A of the Act, the person benefiting from this consent is notified that if Council is engaged as the Principal Certifying Authority, critical stage inspections to be carried out will include those listed under the sub-heading “Critical Stage Inspections” in this consent. If additional inspections are required, further notice will be provided.
- vii. All references to “the Act” under this consent relate to the Environmental Planning and Assessment Act 1979.
- viii. When private certifiers are registering Part 4A Certificates with Council, it is requested that plans be lodged in PDF format.
- ix. Following the issue of the Occupation Certificate an inspection fee of \$155.00 (per inspection) is to be paid at the Cashier’s desk at the Civic Centre to ledger number 1040202.2997.028 in order to release the footpath security deposit.

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

- x. Dial Before You Dig is a free referral service for information on underground pipes and cables anywhere in Australia. Using Dial Before You Dig can prevent damage, disruption, injury and even death. Lodge your enquiry online at <http://www.1100.com.au/default.aspx> or call 1100 during business hours.
- xi. This consent does not authorise the carrying out of any of the following activities which require the separate approval of Council under Section 68 of the Local Government Act 1993:
- Place a waste storage container in a public place
 - Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway

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

- xii. Where an Accredited Certifier has been appointed as the Principal Certifying Authority, a fee of \$180 will be deducted from the security damage deposit on each occasion where Council, because of a complaint about the conduct of the building works, inspects the premises. In obtaining a Construction Certificate the person paying the security damage deposit acknowledges this cost may be recovered from the security damage deposit.
- xiii. A Tree Permit from Council is required for the pruning and/or removal of trees on public land. Refer to Council's website <http://www.mosman.nsw.gov.au/environment/trees> for further detail in relation to tree permits and to obtain an application form.