

THIS DEED made the 19 day of JUNE 2012

**BETWEEN:** **BOTANY BAY CITY COUNCIL** of 141 Coward Street, Mascot in the State of New South Wales ("the Council") of the first part

**AND:** **PAUL GIANNIKOURIS** and **STEPHANI GIANNIKOURIS** both of 4 Marine Parade, Maroubra and **NORMAN GIANNIKOURIS** and **KATINA GIANNIKOURIS** both of 15 Bell Street, Maroubra in the said State ("Giannikouris") of the second part

**AND:** **PAUL LESLIE MULHOLLAND, DAVID BARRY MULHOLLAND** and **ERIC ALLAN ROBINSON** of 40 Kent Road, Mascot in the said State ("Mulholland") of the third part.

**WHEREAS:**

- A. On 15 October 2008, Giannikouris were the registered proprietors of the land known as 34-38 Kent Road, Mascot ("the Development Site") being the whole of the land comprised in Certificate of Title Folio Identifier 1/120732.
- B. On 15 October 2008 Development Application 09/131 was lodged in respect of the Development Site on behalf of and with the consent of Giannikouris seeking development consent for subdivision of one lot into three Torrens title lots and dedication of land for the widening of Ossary Street and the extension of Coggins Place (the first Development Application).
- C. On 14 November 2008 Development Application 09/155 was lodged in respect of part of the Development Site the subject of the first Development Application on behalf of and with the consent of Mulholland seeking development consent for the warehousing of sound and production equipment, associated office space, alterations and additions to the existing warehouse buildings and three business identification signs (the second Development Application).

- D. On 18 March 2009, in relation to the first Development Application, the Council resolved to:
- (a) To grant Development Consent to the Development Application for subdivision of one lot into three Torrens title lots and dedication of land for the widening of Ossary Street and the extension of Coggins Place subject to conditions imposed in the schedule attached to the Consent (the Development Consent).
  - (b) Prepare a Voluntary Planning Agreement under Section 93F of the *Environmental Planning & Assessment Act 1979* ("the Act") in respect of Public Domain Works in regards to dedication of land and roadworks;
  - (c) Resubmit the Agreement to Council for approval to exhibit the Agreement and associated explanation notes.
- E. On 18 March 2009, Giannikouris lodged with the Council an application pursuant to Section 96(1) of the Act (DA 09/131/01) seeking to delete certain specified conditions contained in the first Development Consent ("the Modification Application").
- F. By amended notice of determination dated 25 March 2009 the Council notified the applicant of the grant of the Development Consent determined 18 March 2009 and by way of the same notice of determination notified Giannikouris of its approval of the Modification Application.
- G. The notice of determination dated 25 March 2009 attached the schedule of the conditions upon which the Development Consent was granted and incorporated the amendments proposed in the Modification Application.
- H. On 2 April 2009 Development Consent No. 09/155 was issued in respect of the second Development Application.
- I. On 7 May 2009, Giannikouris lodged with the Council an application pursuant to Section 96(1A) of the Act (DA09/131/02) seeking to modify certain specified conditions contained in the Development Consent and to defer road works, road widening, site validation and public domain landscaping works associated with the subdivision of the land through a

- D. On 18 March 2009, in relation to the first Development Application, the Council resolved to:
- (a) To grant Development Consent to the Development Application for subdivision of one lot into three Torrens title lots and dedication of land for the widening of Ossary Street and the extension of Coggins Place subject to conditions imposed in the schedule attached to the Consent (the Development Consent).
  - (b) Prepare a Voluntary Planning Agreement under Section 93F of the *Environmental Planning & Assessment Act 1979* ("the Act") in respect of Public Domain Works in regards to dedication of land and roadworks;
  - (c) Resubmit the Agreement to Council for approval to exhibit the Agreement and associated explanation notes.
- E. On 18 March 2009, Giannikouris lodged with the Council an application pursuant to Section 96(1) of the Act (DA 09/131/01) seeking to delete certain specified conditions contained in the first Development Consent ("the Modification Application").
- F. By amended notice of determination dated 25 March 2009 the Council notified the applicant of the grant of the Development Consent determined 18 March 2009 and by way of the same notice of determination notified Giannikouris of its approval of the Modification Application.
- G. The notice of determination dated 25 March 2009 attached the schedule of the conditions upon which the Development Consent was granted and incorporated the amendments proposed in the Modification Application.
- H. On 2 April 2009 Development Consent No. 09/155 was issued in respect of the second Development Application.
- I. On 7 May 2009, Giannikouris lodged with the Council an application pursuant to Section 96(1A) of the Act (DA09/131/02) seeking to modify certain specified conditions contained in the Development Consent and to defer road works, road widening, site validation and public domain landscaping works associated with the subdivision of the land through a

Deed of Agreement with Council ("the Second Modification Application").

- J. By notice of determination dated 11 November 2009 Council notified Giannikouris of its approval of the Second Modification Application and modified the Development Consent by
- (i) Amending Conditions 2, 4, 5, 7, 8(b), 9, 18, 20, 23, 25(a), 26, 27 and 41;
  - (ii) Deleting Condition 19;
  - (iii) Adding Condition 2(b).
- K. The Development Consent as now amended ("amended Development Consent") is attached to the Deed between the parties of 20 January 2010 (recital Q) as Annexure "A".
- L. Condition 2(a) of the amended Development Consent requires Giannikouris to pay a Section 94 Contribution for the Development Site in the amount of \$423,518.00 for public domain infrastructure works. Condition 2(a) is subject to condition 3 which particularises the basis of the Section 94 Contribution.
- M. Condition 2(b) of the amended Development Consent requires Giannikouris to deposit two (2) unconditional bank guarantees for the deferred road works, road widening, site validation and public domain landscaping works associated with the subdivision of the land pursuant to a Deed of Agreement.
- N. Condition 3(a) of the amended Development Consent notes the Section 94 Contributions may be made in accordance with an agreed Voluntary Planning Agreement for the Site or if no such agreement is reached, then a Section 94 Contribution of \$423,518.00 is payable in accordance with condition 3(b).
- O. On 23 December 2009 Giannikouris lodged with the Council an Application for Subdivision of the Development Site into 3 lots in accordance with a proposed Deposited Plan 1137430.
- P. Prior to Registration of the proposed Deposited Plan for subdivision of the Development Site Mulholland and Giannikouris entered into a contract for Giannikouris to sell the

proposed Lot 10 in the proposed Deposited Plan to Mulholland.

- Q. On 20 January 2010 ("the Earlier Deed") the Council, Giannikouris and Mulholland entered into a Deed of Agreement to defer road works, road widening, site validation and public domain landscaping works associated with the subdivision of the land subject to Conditions 2(b) and 3(b) of the amended Development Consent which required the submission to Council of unconditional Deposit Guarantees pursuant to Conditions 2(b) and 3(b) of the amended Development Consent.
- R. The Earlier Deed also provided for Mulholland and Giannikouris to undertake the required roadworks and landscaping at their expense pursuant to the provisions of Clause 8(b). The works required to be undertaken were covered in Clause 2, 4, 5 and 6 of the Earlier Deed, a copy of which is attached to this agreement.
- S. On 29 January 2010 the proposed Deposited Plan of the Development Site subdivision was Registered and the Development Site now comprises the whole of the land being Lot 10 of DP 1137430 ("**Lot 10**"), Lot 11 of DP 1137430 ("**Lot 11**") & Lot 12 of DP 1137430 ("**Lot 12**")
- T. On or about 22 March 2010 the Transfer of Lot 10 to Mulholland was registered.
- U. In compliance with the Resolution of Council dated 18 March 2009, in which Council resolved to grant Development Consent to the Development Application for subdivision of one lot into three Torrens title lots and dedication of land for the widening of Ossary Street and the extension of Coggins Place, the parties hereto now enter into this Planning Agreement pursuant to Section 93F of the Act.
- V. This Planning Agreement has been publicly notified in accordance with Section 93G of the Act and clause 25D of the Environmental Planning & Assessment Regulation.
- W. Redevelopment within the locality will give rise to an increased demand for car and/or truck parking.

**NOW THIS DEED WITNESSES** as follows:

1. This Planning Agreement shall be binding on the parties hereto and upon their respective heirs, executors, transferees and assigns.
2. The rights of the Council expressly provided for herein are cumulative and in addition to and not exclusive of any rights of the Council existing at law or which the Council would otherwise have available to it.
3. In case one or more of the provisions contained in this Planning Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining conditions contained therein shall not thereby be affected.
- 3A. Nothing in this agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty including a discretion to grant or refuse a development application, accept or otherwise a SEPP 1 objection or rezoning proposal.
4. The Council covenants and agrees with Giannikouris and Mulholland that as consideration of the dedication of part of Lots 10, 11 & 12 to the Council for road widening as provided for in condition 8(a) of the amended Development Consent and as shown in DP1137430 and in recognition of the Town Planning objective to encourage increased commercial activity and uses on the development site:
  - (i) that notwithstanding the currently permissible floor space ratio of 2.5:1, Council shall permit a floor space ratio of 3.30:1 on Lot 10 provided that:
    - (a) any floor area in excess of a floor space ratio of 2.5:1 is put to commercial office or educational establishment purposes only, and;
    - (b) (if required at the time of lodging any future application) the application is supported by a valid SEPP 1 objection or the application is properly justified by a written request to vary a development standard pursuant to clause 4.6(3) of the draft Botany LEP 2012; and,

- (c) if an educational establishment purpose is proposed, any necessary amendment is made to the then current zoning of the land such as to permit the use of Lot 10 for such purpose.
- (ii) that notwithstanding the currently permissible floor space ratio of 2.5:1, Council shall permit a floor space ratio of 3.55:1 on each of Lot 11 and Lot 12 provided that:
  - (a) any floor area in excess of a floor space ratio of 2.5:1 is put to commercial office or educational establishment purposes only; and,
  - (b) (if required at the time of lodging any future application) the application is supported by a valid SEPP 1 objection or the application is properly justified by a written request to vary a development standard pursuant to clause 4.6(3) of the draft Botany LEP 2012; and,
  - (c) if an educational establishment purpose is proposed, any necessary amendment is made to the then current zoning of the land such as to permit the use of Lot 11 and 12 for such purpose
- (iii) the Council will reduce the parking requirement for Lots 10, 11 and 12 to one (1) space per 60 sqm as applies to development within the Mascot Station Precinct DCP.
- (iv) for the purposes this Planning Agreement the above ground parking and associated manoeuvring space of Lots 10, 11 and 12 of DP1137430, is not to be counted as Gross Floor Area.
- (v) the Council will accept a Section 94 Contribution of \$273,518.00 in accordance with condition 3(a) of the amended Development Consent and in lieu of the contribution otherwise required under conditions 2(a) and 3(b) of the amended Development Consent.

5. Giannikouris and Mulholland further covenant with the Council:

- (a) that within such time as the parties hereto agree, they shall do all things reasonably necessary to obtain the consent to the registration of this Planning Agreement over the titles to Lots 10, 11 and 12 pursuant to Section 93H of the Act from all persons who have an interest in Lots 10, 11 and 12;

- (b) that forthwith after receiving the consents specified in subclause (a) hereof they shall cause this Planning Agreement to be registered on the titles of Lots 10, 11 and 12 with such registration occurring no later than within 2 months of the date of this Planning Agreement;
- (c) that if this Planning Agreement is not registered on the titles to Lots 10, 11 and 12 of DP1137430, and if Giannikouris and Mulholland should propose to sell any or all of Lots 10, 11 and 12, then they shall:
  - (i) within seven (7) days of listing any or all of Lots 10, 11 and 12 for sale, either through an agent or privately, notify the Council of such intention;
  - (ii) as a condition of any sale, require that the incoming purchaser enter into with Council a like Planning Agreement to this present Planning Agreement in which the same covenants as set out herein shall apply;
  - (iii) within seven (7) days of exchange of contracts for the sale of any or all of Lots 10, 11 and 12, notify the Council of the sale and provide the Council with a copy of the contract;
  - (iv) within twenty one (21) days of receipt from the Council of a replacement Planning Agreement between the Council and the purchaser substantially in the form of this Planning Agreement, have it executed by the purchaser and return it to the Council;
  - (v) that if this Planning Agreement is not registered on the title to Lots 10, 11 and 12, and if Giannikouris and Mulholland should propose otherwise than by sale to transfer or assign their interest in any or all of Lots 10, 11 and 12 or any part thereof to a transferee or assignee, then they shall before effecting such assignment or transfer have the incoming transferee or assignee enter into an agreement with the Council substantially in the form of this Planning Agreement insofar as concerns the interest assigned or transferred and shall provide same to the Council.
- (d) that they shall construct the required roadworks and landscaping within the time periods and as required by the Earlier Deed and for the purpose of providing for the enforcement of the agreement Mulholland has provided an unconditional bank guarantee in the sum of eighty thousand six hundred and nine dollars (\$80,609.00)



to Council and Giannikouris has provided an unconditional bank guarantee in the sum of three hundred and seventy eight thousand nine hundred dollars (\$378,900.00). The unconditional bank guarantees will not be released by Council unless and until the required road works and landscaping have been undertaken in accordance with the Earlier Deed.

- (e) it is acknowledged by Mulholland and Giannikouris that should the road works and landscaping not be undertaken by or before 20 January 2013, Council will be entitled to undertake the works itself and call upon the relevant unconditional bank guarantee provided to it to pay for such works and all of Council's other rights in relation the works are otherwise as provided for in the Earlier Deed.
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- 6. Giannikouris and Mulholland further covenant and agree with the Council that in the event that the consents to registration of this Planning Agreement cannot be obtained from all persons who have an interest in Lots 10, 11 and 12 as required by clause 5(a) within 2 months of the date of this Planning Agreement, then the Council shall be entitled to register a caveat at Land & Property Information NSW over the titles of Lots 10, 11 and 12 to protect its interest therein pursuant to this Planning Agreement.
  - 7. Should Giannikouris and Mulholland be in breach of any of the terms of this Planning Agreement, and not rectify the default within twenty one (21) days of receiving notice from Council to do so (except if a delay in rectification is likely to cause irremediable damage or prejudice to Council, in which case no notice is required) Council shall be entitled, at its option, to enforce by way of injunctive relief in the Supreme Court any provisions of this Planning Agreement which have been breached, or to seek damages or seek to enforce the provisions of any development consent which relate to Lots 10, 11 and 12 whether by way of an order of the kind specified in Section 121B of the Act, or by Class 4 proceedings in the Land and Environment Court, or otherwise.
  - 8. Any amendment or variation to this Planning Agreement is not effective unless it is in writing and signed by all the parties.

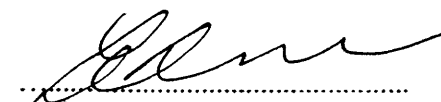
9. The explanatory note put on exhibition with this Planning Agreement is not to be used in construing the terms of this Planning Agreement.
10. In the event of any disagreement between the parties hereto arising out the provisions of this Planning Agreement, and if the parties are unable within a reasonable time to resolve such disagreement amicably, either party may serve notice on the other requiring the matter to be referred to a conciliation by a single conciliator at the Australian Commercial Disputes Centre Limited in Sydney. The parties shall thereafter in good faith seek to resolve the matter through conciliation and the parties shall equally bear the cost of such conciliation. The parties must keep confidential and must not to disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
- (a) views expressed or proposals or suggestions made by a party, an expert or the conciliator during the conciliation relating to a possible settlement of the dispute;
  - (b) admissions or concessions made by a party during the conciliation in relation to the dispute; and
  - (c) information, documents or other material, including any confidential information, concerning the dispute which are disclosed by a party during the conciliation unless such information, documents or facts would have been otherwise discoverable in judicial or arbitral proceedings.
11. (a) All words in this clause which are also defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) ("the GST Act") have a corresponding meaning to that in the GST Act;
- (b) the consideration for any supply under this Planning Agreement excludes GST;
  - (c) where a party to this Planning Agreement is taken to have made a supply to another party, the recipient of that supply must, in addition to the consideration payable for the supply and when paying the consideration for the supply, also pay

to the maker of the supply an amount equal to the GST payable in respect of that supply. The recipient of a supply must also pay the GST payable in respect of a supply for which no monetary consideration is payable when the maker of the supply demands payment;

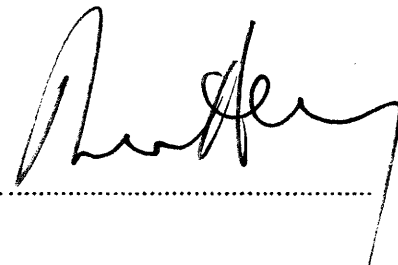
- (d) the maker of a supply must give the recipient a tax invoice in the form required by the GST Act at the same time it receives payment from the recipient of the GST payable for that supply;
- (e) despite any other provision of this Agreement, any amount payable under this Agreement, which is calculated by reference to an amount paid or incurred by a party to this Planning Agreement, is reduced by the amount of any input tax credit to which that party or a member of its GST Group is entitled in respect of that amount.

**IN WITNESS WHEREOF** the parties have set their hands and seals on the day first hereinbefore written.

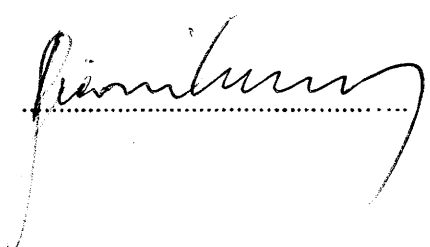
**THE COMMON SEAL of BOTANY  
BAY CITY COUNCIL** was hereunto  
affixed pursuant to a resolution of the  
Council passed on the eighteenth day  
of March 2009.

  
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General Manager

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.....  
Mayor



**SIGNED SEALED & DELIVERED**  
by the said **PAUL GIANNIKOURIS**  
in the presence of:

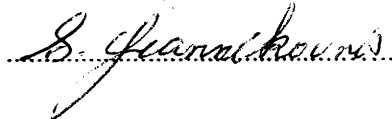
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DAVID J. D'AMATO

SIGNED SEALED & DELIVERED  
by the said STEPHANI GIANNIKOURIS  
in the presence of:

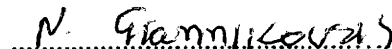
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DAVID J. D'AMATO

SIGNED SEALED & DELIVERED  
by the said NORMAN GIANNIKOURIS  
in the presence of:


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DAVID J. D'AMATO

SIGNED SEALED & DELIVERED  
by the said KATINA GIANNIKOURIS  
in the presence of:

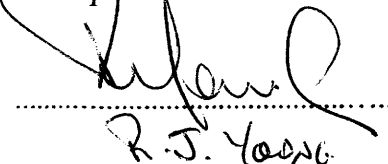
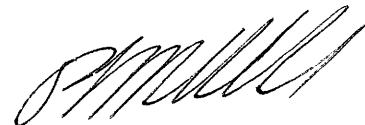
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DAVID J. D'AMATO

SIGNED SEALED & DELIVERED  
by the said PAUL LESLIE MULHOLLAND  
in the presence of:

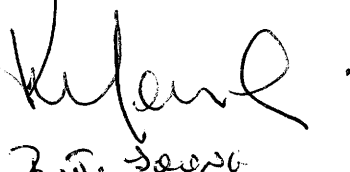
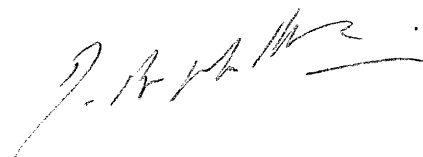
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R.J. Yocum

SIGNED SEALED & DELIVERED  
by the said DAVID BARRY MULHOLLAND

)  
)



R.J. Yocum

in the presence of:

)

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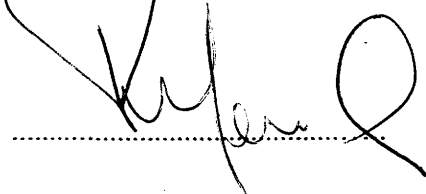
SIGNED SEALED & DELIVERED  
by the said ERIC ALLEN ROBINSON  
in the presence of:

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DATED

2011

**BETWEEN:**

**BOTANY BAY CITY COUNCIL**

("the Council")

**AND:**

**PAUL GIANNIKOURIS and STEPHANI GIANNIKOURIS and NORMAN  
GIANNIKOURIS and KATINA GIANNIKOURIS**

("Giannikouris")

**AND:**

**PAUL LESLIE MULHOLLAND and  
DAVID BARRY MULHOLLAND and  
ERIC ALLAN ROBINSON**

("Mulholland")

## **DEED OF AGREEMENT**

### **HOUSTON DEARN O'CONNOR**

Solicitors

Suite 33, 5<sup>th</sup> Floor

12 Railway Parade

BURWOOD NSW 2134

DX 8565 BURWOOD

Tel: 9744 9247

Fax: 9744 6739

REF: PM:PM:B5335

**THIS DEED** is made on the 20<sup>th</sup> day of JANUARY, 20~~09~~<sup>10</sup>  
between **BOTANY BAY CITY COUNCIL** of 141 Coward Street, Mascot ("Council") and  
**PAUL GIANNIKOURIS and STEPHANI GIANNIKOURIS** of 4 Marine Parade,  
Maroubra, **NORMAN GIANNIKOURIS and KATINA GIANNIKOURIS** of 15 Bell Street  
Maroubra NSW 2035 ("Giannikouris") and **PAUL LESLIE MULHOLLAND, DAVID  
BARRY MULHOLLAND AND ERIC ALLEN ROBINSON** of  
("Mulholland").

**WHEREAS:**

- A. Giannikouris is the registered proprietor of the land known as 34 Kent Road Mascot being the whole of land contained in Folio Identifier 1/120732 ("the subject premises").
- B. Giannikouris proposes redeveloping the subject premises.
- C. On 25 March 2009 Council issued an amended Notice of Determination of Development Application to Paul Giannikouris authorising the subdivision of the subject premises into three Torrens Title lots (hereafter referred to as proposed Lots 10, 11 and 12) and dedication of land for the widening of Ossary Street and the extension of Coggins Place being development application number 09/131 ("the Development Consent").
- D. Mulholland and Giannikouris have entered into a contract for Giannikouris to sell proposed Lot 10 to Mulholland.
- E. On 11 November 2009, Council modified the Development Consent by:
  - (i) Amending Conditions 4, 5, 7, 8(b), 9, 18, 20, 23, 25(a), 26, 27 and 41;
  - (ii) Deleting Condition 19;
  - (iii) Adding Condition 2(b).
- F. The Development Consent as now amended is attached to this deed as Annexure "A".

- G. In compliance with the Conditions of the Development Consent the Council, Giannikouris and Mulholland now enter into this Agreement.
- H. On 2 April 2009, Council approved Development Application No. 09/155 for the warehousing of sound and production equipment, associated office space, alterations and additions to the existing warehouse buildings and three business identification signs on proposed Lot 10.

**NOW THIS DEED WITNESSETH AS FOLLOWS:**

1. This Agreement shall be binding upon the heirs, executors, transferees and assigns of each of the parties.
2.
  - (a) Prior to the issue of the Subdivision Certificate, Giannikouris shall lodge a separate Development Application for the roadworks, widening, footpath and landscaping associated with the subdivision of the land (**"the roadworks development application"**).
  - (b) Mulholland shall, prior to the issue of an Occupation Certificate for any proposed building(s) or use(s) of proposed Lots 10, carry out at his own expense the roadworks, widening, footpath and landscape works for that part of the works shown in Plans SC01 rev DA2 by Christiansen O'Brien Pty Ltd and 09187\_DA\_C101 rev 01 by Henry & Hymas adjoining Lot 10 on the Ossary Street and Kent Road frontages.
  - (c) Giannikouris shall, prior to the issue of an Occupation Certificate for any building(s) or use(s) of proposed Lots 11 or 12, construct all the roadworks, widening, footpath and landscaping as shown in Plans SC01 rev DA2 by Christiansen O'Brien Pty Ltd and 09187\_DA\_C100 rev 01, 0109187\_DA\_C101 rev 01 and 0109187\_DA\_C500 rev 01 by Henry & Hymas, other than those referred to in 2(b) above.



(d) In the event roadworks adjacent to Lot 11 or 12 are commenced prior to roadworks under clause 2(b), then Giannikouris shall construct a temporary footpath from Kent Road along Ossary Street to provide pedestrian access to the new developments on Lots 11 and 12. The temporary footpath is to be suitable for wheelchair and pram use. An Occupation Certificate for any building or use of proposed lot 11 or 12 shall not issue until these works are completed to Council's reasonable satisfaction.

3. (a) Prior to the issue of the Subdivision Certificate, Mulholland will provide an unconditional bank guarantee in the sum of \$80,609 in relation to the works required to be undertaken and requirements pursuant to Clauses 2(b), 4(b) and 5(b) hereof, with such unconditional bank guarantee being in favour of the Council and to be held by Council until the works required to be undertaken and requirements pursuant to Clauses 2(b), 4(b) and 5(b) have been completed to Council's satisfaction. The Subdivision Certificate shall not be issued until this requirement has been satisfied.

(b) Prior to the issue of the Subdivision Certificate, Giannikouris will provide an unconditional bank guarantee in the sum of \$378,900 in relation to the works required to be undertaken and requirements pursuant to Clauses 2(c), 4(a) and 5(a) hereof, with such unconditional bank guarantee being in favour of the Council and to be held by Council until the works required to be undertaken and requirements pursuant to Clause 2(c), 4(a) and 5(a) have been completed to Council's satisfaction. The Subdivision Certificate shall not be issued until this requirement has been satisfied.

(c) (i) Should the works required by Clause 2(b) not be carried out within three (3) years of the date of this agreement, then Council can call upon the bank guarantee and use the necessary amount of those funds to carry out such works itself.

In the event that the unconditional bank guarantee contains insufficient funds for the Council to complete works in accordance with this clause

then Council shall be entitled to recover from Mulholland its further costs as a debt due to it in any Court of competent jurisdiction.

- (ii) Should the works required by Clause 2(c) not be carried out within three (3) years of the date of this agreement, then Council can call upon the bank guarantee and use the necessary amount of those funds to carry out such works itself.

In the event that the unconditional bank guarantee contains insufficient funds for the Council to complete works in accordance with this clause then Council shall be entitled to recover from Giannikouris its further costs as a debt due to it in any Court of competent jurisdiction.

- 4a. Giannikouris shall ensure that all services (Utility, Council etc) within the road reserve and footpath areas adjacent to Lots 11 and 12 are relocated and/or adjusted to match the proposed and/or existing levels prior to the release of the unconditional bank guarantee referred to in 3(c)(ii) and prior to the issue of an Occupation Certificate for any building(s) or use(s) of proposed Lots 11 or 12.
- 4b. Mulholland shall ensure that all services (Utility, Council etc) within the road reserve and footpath areas adjacent to Lot 10 are relocated and/or adjusted to match the proposed and/or existing levels prior to the release of the unconditional bank guarantee referred to in 3(c)(i) and prior to the issue of an Occupation Certificate for any building(s) or use(s) of proposed Lot 10.
- 5a. Giannikouris shall provide a validation report described and referred to in Condition 25 for each of proposed Lots 11 and 12 prior to the issue of an Occupation Certificate for any building or use on that respective lot.
- 5b. Mulholland shall provide a validation report described and referred to in Condition 25 for proposed Lot 10 prior to the issue of an Occupation Certificate for any building or use on that lot.
- 6. Giannikouris shall provide the detailed landscape documentation described and referred to in Condition 26 in a timely manner to allow Council to assess and approve the proposed landscaping prior to the works being carried out.

- 7a. Giannikouris shall appoint Council as the Principal Certifying Authority (PCA) for any Development Applications and Construction Certificates relating to proposed Lots 11 and 12 and in relation to the Development Application and Construction Certificate for the roadworks Development Application.
- 7b. Mulholland shall appoint Council as the Principal Certifying Authority (PCA) for any Development Applications and Construction Certificates relating to proposed Lot 10.
8. (a) Mulholland shall satisfy the requirements of Clauses 2(b), 4(b) and 5(b) before an Occupation Certificate is issued with respect to any building(s) or use(s) on Lot 10 and in any event, within three (3) years of the date hereof.
- (b) Giannikouris shall satisfy the requirements of Clauses 2(c), 2(d) (if applicable), 4(a) and 5(a) before any Occupation Certificate issues for any building(s) or use(s) on Lots 11 or 12 and in any event, within three (3) years of the date hereof.
9. Council will be entitled to refuse to issue any Occupation Certificate:
- (a) In respect of proposed Lot 10 until it is satisfied on reasonable grounds that all of the requisite works, including the roadworks, widening, footpath construction, validation and associated landscaping works have been completed to Council's reasonable satisfaction being the works required pursuant to Clause 2(b), ~~2(d) if applicable~~, 4(b) and 5(b) hereof.
- (b) In respect of proposed Lots 11 or 12 until it is satisfied on reasonable grounds that all of the requisite works, including the roadworks, widening, footpath construction, validation and associated landscaping works have been completed to Council's reasonable satisfaction being the works required pursuant to Clause 2(c), ~~2(d) if applicable~~ 4(a) and 5(a) hereof.
- 10B. Should Giannikouris propose to sell the subject premises or part thereof to a purchaser not party to this deed and prior to the obligations in this deed having been completed, then it shall:
- (a) Within seven (7) days of listing the subject premises or part thereof for sale, either through an agent or privately, notify the Council of such intention.

- (b) As a condition of any sale it shall require that the incoming purchaser enter into a like Agreement to this Agreement with the Council in which the same covenants as set out herein shall apply including the provision of unconditional bank guarantees for the roadworks, footpath construction, validation and landscaping works; and
- (c) Within seven (7) days of exchange of Contracts notify the Council of the sale and provide the Council with a copy of the Contract. Council shall within a further 21 days submit to the purchaser (as notified by Giannikouris) a form of Agreement substantially in the same form as this Agreement for execution by the purchaser. As from the date of exchange of such further agreement between the Council and the purchaser, Giannikouris shall be released from its obligations pursuant to this Deed (other than any liability for any breaches committed prior to that date) and the release of the unconditional bank guarantees (on receipt of equivalent bank guarantees by Council from the purchaser ).

10C. Should Mulholland propose to sell Lot 10 to a purchaser not party to this deed and prior to the obligations in this deed having been completed, then it shall:

- (a) Within seven (7) days of listing the subject premises or part thereof for sale, either through an agent or privately, notify the Council of such intention.
- (b) As a condition of any sale it shall require that the incoming purchaser enter into a like Agreement to this Agreement with the Council in which the same covenants as set out herein shall apply including the provision of unconditional bank guarantees for the roadworks, footpath construction, validation and landscaping works; and
- (c) Within seven (7) days of exchange of Contracts notify the Council of the sale and provide the Council with a copy of the Contract. Council shall within a further 21 days submit to the purchaser (as notified by Mulholland) a form of Agreement substantially in the same form as this Agreement for execution

by the purchaser. As from the date of exchange of such further agreement between the Council and the purchaser, Mulholland shall be released from its obligations pursuant to this Deed (other than any liability for any breaches committed prior to that date) and the release of the unconditional bank guarantees (on receipt of equivalent bank guarantees by Council from the purchaser).

11A. Should Giannikouris propose to otherwise transfer or assign its interest or any part thereof to a transferee or assignee then it shall before such assignment or transfer taking place have the incoming assignee or transferee enter into an agreement substantially in the same form as this agreement. In so far as the interest of Giannikouris assigned or transferred, as and from the date of exchange of such further Agreement between the Council and the assignee or transferee, Giannikouris shall be released from its obligations pursuant to this Deed (other than any liability for any breaches committed prior to that date).

11B. Should Mulholland propose to otherwise transfer or assign its interest or any part thereof to a transferee or assignee then it shall before such assignment or transfer taking place have the incoming assignee or transferee enter into an agreement substantially in the same form as this agreement. In so far as the interest of Mulholland assigned or transferred, as and from the date of exchange of such further Agreement between the Council and the assignee or transferee, Mulholland shall be released from its obligations pursuant to this Deed (other than any liability for any breaches committed prior to that date).

12. Giannikouris shall pay the Council's reasonable Solicitor/Client costs of preparing this Agreement and the cost of Council registering a caveat over the title to the subject premises, if in the opinion of Council it is prudent to do so. Further, should it be necessary for Council to consent to the registration of any lease, mortgage, consolidation of title, strata plan or other document as a result of its caveat being registered on the title to the subject premises Giannikouris shall pay the Council's reasonable Solicitor/Client costs of obtaining Council's consent to such registration. Giannikouris shall also pay the Council's reasonable Solicitor/Client

costs of preparing a Positive Covenant and having it registered over the title to the property, should it become necessary.

- 13 (a). Giannikouris and Mulholland covenant and agree to, within 30 days of written request by Council, execute a Positive Covenant pursuant to Section 88E of the Conveyancing Act 1919 wherein the obligations imposed by this Deed are incorporated into such Positive Covenant and shall do all such things and execute all such documents to have such Positive Covenant registered on the title to the subject premises. Giannikouris and Mulholland further agree that the Council shall, pending registration of such Positive Covenant, be entitled to register a caveat at the Land Titles Office against the title of the subject premises to protect its rights hereunder. Council covenants and agrees to consent to:

- (i) The registration of the proposed Subdivision Plan pursuant to the development consent; and
- (ii) The registration of the transfer from Giannikouris to Mulholland of proposed Lot 10 in the subdivision; and
- (iii) The registration of the mortgage from Mulholland to its mortgagee in relation to proposed Lot 10,

within seven (7) days of receiving a written request from Giannikouris in relation to the registration of the Subdivision Plan and the transfer and from Mulholland in relation to the mortgage. It is acknowledged and accepted that in consenting to the transfer from Giannikouris to Mulholland the caveat is to remain on the title to Lot 10 until Council is required to withdraw it pursuant to Clause 13(b) hereof.

- 13 (b) Council shall withdraw any caveat registered over the titles to the subject premises within 14 days of a written request to do so by either Giannikouris or Mulholland made after issue of an Occupation Certificate for any buildings or uses on Lots 10, 11 or 12 insofar only as relates to the Lot for which the Occupation Certificate has issued.

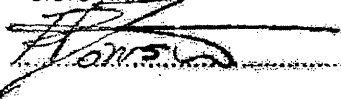
14. Should Giannikouris be in breach of any terms of this Agreement, and without any prior warning being given, Council can, at its option, enforce by way of injunctive relief in the Supreme Court the provisions of this Agreement which have been breached, seek damages or seek to enforce the provisions of Conditions 8 and 9 of the Development Consent whether by way of order under Section 121B of the Environmental Planning and Assessment Act, Class 4 proceedings in the Land and Environment Court or otherwise.
15.
  - a) All monies payable by and on behalf of Giannikouris under this Agreement are exclusive of Goods and Services Tax or like impost (GST).
  - b) Liability for GST (payable in respect of any taxable supply) is additional. It is payable by Giannikouris to the Council at the same time as rent and other monies are payable.
16.
  - (a) Should the contract for the sale of Lot 10 from Giannikouris to Mulholland not complete for any reason, then Giannikouris covenants and agrees to perform and be subject to all of the obligations, covenants and agreements imposed upon or agreed to by Mulholland in this Deed.
  - (b) Both Giannikouris and Mulholland covenant and agree with Council to advise Council within 7 days in writing:
    - (i) of completion of the agreement between Giannikouris and Mulholland;  
or
    - (ii) of termination or rescission.

IN WITNESS WHEREOF the parties have executed this Deed.

<sup>ACTING</sup>  
SIGNED BY THE GENERAL MANAGER  
FOR AND ON BEHALF OF  
BOTANY BAY CITY COUNCIL  
Pursuant to Section 683 of the Local  
Government Act 1993

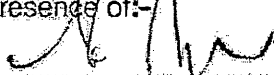
ACTING GENERAL MANAGER

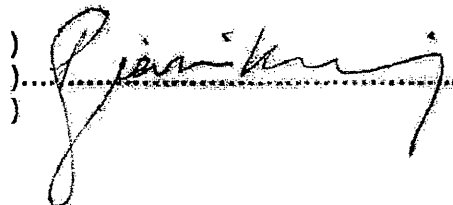
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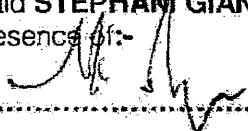


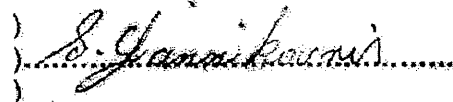
SIGNED SEALED AND DELIVERED  
by the said PAUL GIANNIKOURIS  
in the presence of:-



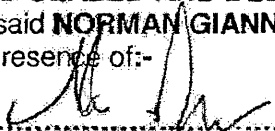


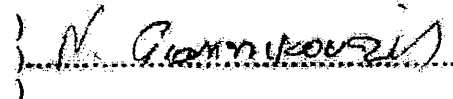
SIGNED SEALED AND DELIVERED  
by the said STEPHAN GIANNIKOURIS  
in the presence of:-



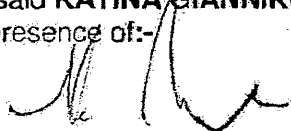


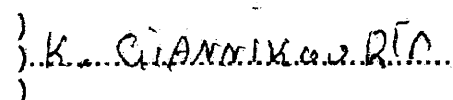
SIGNED SEALED AND DELIVERED  
by the said NORMAN GIANNIKOURIS  
in the presence of:-





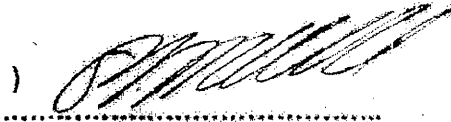
SIGNED SEALED AND DELIVERED  
by the said KATINA GIANNIKOURIS  
in the presence of:-

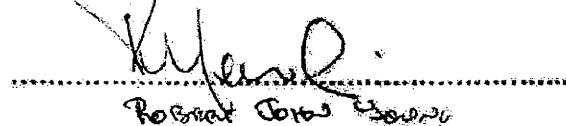




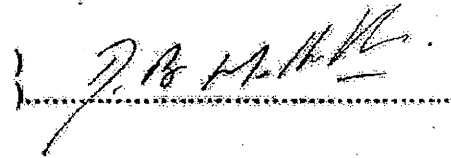


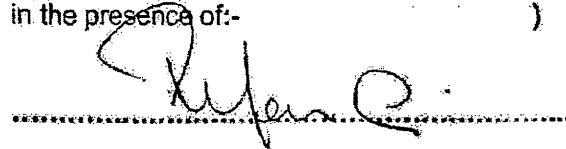
SIGNED SEALED AND DELIVERED  
by the said PAUL LESLIE MULHOLLAND )  
in the presence of:- )



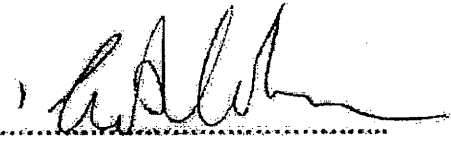
  
Robert Toros

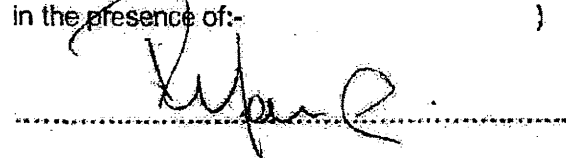
SIGNED SEALED AND DELIVERED  
by the said DAVID BARRY MULHOLLAND )  
in the presence of:- )



  
Robert Toros

SIGNED SEALED AND DELIVERED  
by the said ERIC ALLEN ROBINSON )  
in the presence of:- )



  
Robert Toros

DATED

20<sup>th</sup> JANUARY

10  
2000

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BETWEEN:

**BOTANY BAY CITY COUNCIL**

of the first part

AND:

**PAUL GIANNIKOURIS**

AND

**STEPHANI GIANNIKOURIS**

AND

**NORMAN GIANNIKOURIS**

AND

**KATINA GIANNIKOURIS**

of the second part

AND

**PAUL LESLIE MULHOLLAND**

AND

**DAVID BARRY MULHOLLAND**

AND

**ERIC ALLEN ROBINSON**

of the third part

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**DEED**

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**HOUSTON DEARN O'CONNOR**

Solicitors

Suites 33, 5th Floor, 12 Railway Parade

BURWOOD NSW 2134

DX 8565 BURWOOD

Tel: (02) 9744 9247

Fax: (02) 9744 6739

Ref: ML:IM:B5192

RJ Dowsett/bp/DA 09/131/02

11 November 2009

Cash McInnes Projects Pty Ltd  
102/159 Ridgescrop Drive  
Castle Hill NSW 2154



**THE CITY OF BOTANY BAY**  
**N.S.W. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**  
**SECTION 96(1A)**  
**MODIFICATION OF DEVELOPMENT CONSENT NO. 09/131**

**Property:** 34-38 Kent Road, Mascot Lot 1 in DP 120732  
**Zoning:** Industrial Special 4(c2) - Airport Related Restricted  
Botany Local Environmental Plan, 1995

Please be advised that your Application 09/131/02, submitted under the provisions of Section 96(1A) of the Environmental Planning and Assessment Act, 1979, to modify Development Consent No. 09/131 has been considered by Council.

The Application has been determined by the modification of Conditions of Council's Notice of Determination as follows:-

- (i) Amend Conditions 4, 5, 7 and 8(b), 9, 18, 20, 23, 25(a), 26, 27 and 41;
- (ii) Delete condition 19
- (iii) Addition of Condition 2(b).

**Notes:**

The Conditions are imposed, taking into account the matters for consideration in determining a Development Application under Section 79C of the Environmental Planning and Assessment Act, 1979, to protect the amenity of the neighbourhood and so that the development will not be contrary to public interest.

**RIGHT OF APPEAL:**

Section 96(6) of the Act confers on an applicant who is dissatisfied with the determination of a Consent Authority in respect of an Application under Section 96(1A) of the Act, a right of appeal to the Land and Environment Court.

Yours faithfully

A handwritten signature in black ink, appearing to read "R J Dowsett", written over a horizontal line.

**R J DOWSETT**

**DIRECTOR - PLANNING & DEVELOPMENT**

Administration Centre, 141 Coward Street, Mascot NSW 2020. (PO Box 331 Mascot NSW 1460)

Telephone: (02) 9366 3666 Facsimile: (02) 9366 3777

E-mail: [council@botanybay.nsw.gov.au](mailto:council@botanybay.nsw.gov.au) Internet: <http://www.botanybay.nsw.gov.au>

### SCHEDULE OF CONSENT CONDITIONS

- 1 The development shall be carried out in accordance with the following plans and documentation except where amended by the condition of the Consent:
  - (a) Plan of Subdivision prepared by Andrew P Mason dated 3 October 2008, Surveyors Reference No. 32369-10 and received by Council on 16 October 2008;
  - (b) Site Constraints Plan prepared by Christopher O'Brien Architect Pty Ltd, Issue DA, dated 14 October 2008, Drawing No. SC01 and received by Council on 16 October 2008;
  - (c) Traffic Impact Review prepared by Christopher Hallam and Associates Pty Ltd, dated September 2008, Job No. 2835 and received by Council on 16 October 2008;
  - (d) Flood Study and Concept Services Design prepared by Emerson & Associates Pty Ltd, Issue A dated 29 July 2008 and received by Council on 16 October 2008;
  - (e) Phase 2 – Detailed Environmental Investigation prepared by David Lane and Associates Pty Ltd, Reference No. DL 2024, dated September 2008 and received by Council and received by Council on 16 October 2008;
  - (f) Statement of Environmental Effects prepared by Nustein Urban, dated October 2008 and received by Council on 16 October 2008;
  - (g) Addendum to the Statement of Environmental Effects prepared by Nustein Urban, dated 20 February 2009 and received by Council 25 February 2009.
- 2 The applicant must prior to the obtainment of the approved plans and specifications pay the following fees:-
  - (a) Section 94 Contribution.....\$423,518.00; and
  - (b) *Prior to the issue of the Construction Certificate for DA10/103, two unconditional Bank Guarantees for the following sums shall be submitted to Council for the roadworks, road widening, site validation and public domain landscaping works associated with the subdivision of the land in Conditions 4, 5, 8(a) and (b), 9, 18, 19, 20, 23, 25(a), 26 and 27.*
    - (i) *Bank Guarantee (Lot 10)* \$80,609.00;
    - (ii) *Bank Guarantee (Lots 11 and 12)* \$378,900.00. (DA09/131/02)
- 3
  - (a) Developer Contributions are required to be made in accordance with the Voluntary Planning Agreement for the site, however should agreement not be reached, the Section 94 Contributions are required to be paid in accordance with Condition 3(b) below;

- (b) The City of Botany Bay being satisfied that the proposed development will increase the demand services facilities within the area, and in accordance with Council's Section 94 Contribution Plans 2005-2010 a sum of \$423,518.00 towards the provision and improvement of transport management is to be paid to Council prior to the issuing of a Subdivision Certificate by the Principal Certifying Authority. The contribution consists of:

1.	Drainage	\$310,922.40
2.	Transport Management:	\$112,595.60

- 4 *Submission of a Subdivision Certificate Application accompanied by a linen plan and Section 88B Instrument with six (6) copies of such and the appropriate fees. The Subdivision Certificate is not to be issued by the Principal Certifying Authority until there is full compliance with the conditions of this Consent. (DA09/131/02)*
- 5 *Prior to the release of the unconditional bank guarantees and the issue of the Occupation Certificate for building(s) or uses(s) of proposed Lots 10, 11 and 12, a Certificate of Survey from a registered Surveyor shall be submitted to the Principal Certifying Authority to the effect that all reduced levels shown upon the plans approved under the Development Application, with relation to drainage, roadways, boundary and road reserve levels, have been strictly adhered to. (DA09/131/02)*
- 6 All applications associated with works on Council's land must be made at least 7-10 days prior to the programmed completion of works and all construction must be completed (and approved by Council) prior to the issuing of the Subdivision Certificate.
- 7 This Consent relates to land in Lot 1, DP 120732 and, as such, works must not encroach on to adjoining lands or the adjoining public place, *other than the required public works and public domain works. (DA09/131/02).*
- 8
- (a) **The applicant at no cost to Council, shall dedicate a 3 metre (approximately) wide strip of land for road widening purposes adjoining and for the full length of the Ossary Street frontage and a 50 metre x 17 metre (approximate strip of land for the purposes of extending Coggins Place through to a connection with Ossary Street. This widening shall be in accordance with the submitted plans prepared by Andrew P Mason dated 3 October 2008, Surveyors Reference No. 32369-10 and received by Council on 16 October 2008. The cost of dedicating this land, inclusive of Council's solicitors costs, shall be borne by the applicant; and**

- (b) The required roadworks, widening and associated landscaping to Ossary Street and Coggins Place shall form the subject of a separate Development Application to Council. The Applicant, at their expense, is to enter into a Deed of Agreement with the City of Botany Bay that states that a separate Development Application will be lodged for the road works, widening and landscaping associated with the subdivision of the land. ***All road widening and associated landscape works shall be carried out at the applicant's expense, prior to the issue of any Occupation Certificate and the release of the unconditional bank guarantees. (DA09/131/02)***
- 9- The applicant, at no cost to Council, shall construct a 1.2 metre wide footpath to both sides of the internal subdivision road reservation (*extension of Coggins Place*), and on the southern side of Ossary Street, from Coggins Place (as extended) to Kent Road. The footway shall be constructed to Council's standards and shall be completed ***prior to the release of the unconditional bank guarantees and the issue of any Occupation Certificate for building(s) or use(s) of proposed Lots 10, 11 and 12. (DA09/131/02)***
- 10 Deleted (DA09/131/01).
- 11 A revised Acid Sulfate Soil Management Plan shall be submitted at the development application stage for construction to include an assessment of the likely effect of building in Acid Sulfate Soil and how any impacts will be mitigated.
- 12 The applicant shall provide Council with a 24 hour contact number for the manager of the remediation works prior to the commencement of any works at the site.
- 13 Any soil disposed of offsite shall be classified in accordance with the procedures in the NSW EPA Environmental Guidelines: Assessment, Classification & Management of Liquid and Non-Liquid Wastes (1999).
- 14 All imported fill shall be validated in accordance with Council's Contaminated and Development Control Plan to ensure that is suitable for the proposed land use from a contaminated perspective.
- 15 Deleted (DA09/131/01).
- 16 No excavation below 0.5m subdivision finished levels shall be conducted, without the development of a site and project specific management plan which includes both environmental and occupational health and safety (OH&S) requirements. Particular attention is to be paid to the monitoring and management of atmospheric contaminants during any such works.

- 17 All costs associated with these development conditions will be borne by the applicant. If, when actioning these Conditions, Council's solicitor is required to act on behalf of Council, the Council's solicitor's fees and charges will also be borne by the applicant.
- 18 Prior to the issue of the Construction Certificate *for the roadworks Development Application*, the applicant shall submit to Council a full photographic survey of the existing conditions of the road reserve (including footpath, grass, kerb and gutter and roadway), and other Council properties which are adjacent to the property. (DA09/131/02)
- 19 ~~Deleted.~~ (DA09/131/02)
- 20 All utility services (Utility, Council etc) within the road reserve (including footpath) shall be relocated/adjusted to match the proposed /existing levels *prior to the release of the unconditional bank guarantees and the issue of any Occupation Certificate for building(s) erected on and or use(s) of proposed Lots 10, 11 and 12.* (DA09/131/02)
- 21 The proposed traffic movements and parking arrangements within the adjoining the development shall conform with the current version of Council's off-street parking DCP; Australian Standard AS2890-1, Australian Road Rules; and the NSW Road Transport (Safety and Traffic Management) Regulation (and any other relevant legislation) unless otherwise stipulated by another condition of this Consent.
- 22 The applicant shall conduct all construction and related deliveries wholly on site. If any use of Council's road reserve is required then separate applications are to be made at Council's Customer Services Department.
- 23 ~~These matters shall be determined prior to the commencement of site works (which need not take place prior to the issue of a Subdivision Certificate)~~

*To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of service. (DA09/131/02)*

- 24 Prior to the release of the Subdivision Certificate, the Applicant is to prepare and submit a Remedial Action Plan (RAP) to remediate the site in accordance with State Environmental Planning Policy No 55 (SEPP 55) – Remediation of Contaminated Lands. The RAP is to be submitted to and approved by Council in writing, upon which the site is to be remediated.

25

- (a) *Prior to the issue of any Occupation Certificates for building(s) or use(s) of proposed Lots 10, 11 and 12, a validation report shall be prepared in accordance with all relevant guidelines, including the NSW EPA Guidelines, Consultants Reporting on Contaminated Sites, and shall certify the suitability of the site for commercial and industrial purposes as defined in the EPA Guidelines. The report shall:*

1. Describe and document all works performed;
2. Include results of validation testing and monitoring;
3. Include validation results of any fill imported on to the site;
4. Show how the objectives of the Remedial Action Plan have been met;
5. Show how all agreed clean-up criteria and relevant regulations have been complied with; and
6. Include clear justification as to uses for which the site can be used and for the potential for off-site migration of any residual contaminants.  
(DA09/131/02)

- 26 Detailed landscape construction documentation (plans and specifications) shall be submitted to and approved by Council for the softworks component of the Roadworks Development Application to be submitted to Council for the Coggins Place extension to Ossary Street. The landscape documentation is to be prepared by a suitably qualified Landscape Architect, in accordance with Council's Landscape DCP. The plan shall include, but not be limited to:

- (a) A dimensions plan showing road verge widths, new footpaths and property boundaries.
- (b) A planting plan at 1:100 scale showing street trees and turfed areas.
- (c) A plant schedule listing street trees by botanical name, numbers, spacings, pot sizes and staking.
- (d) Specifications for footpaths, soil and mulch finishes and so on as well as tree planting details.
- (e) The Plan and details shall be in accordance with Council's City Identity Program and Landscape DCP and any other Council specification or requirement.

**Note:** *The submission and approval of this documentation need not take place prior to the release of the Occupation Certificate. (DA09/131/02)*



27 *Prior to the commencement of site works*, a work methodology prepared by an appropriately qualified geotechnical engineer shall be submitted to the Principal Certifying Authority in respect of all site compaction works. The work methodology shall address the following:

- (a) Predicted vibration emissions extending beyond the boundaries of the site generated from the construction works indicating compliance with the requirements of the NSW environment Protection Authority's Noise Control Guidelines – Vibration in Buildings; and
- (b) Measures to minimize dust, offensive noise emissions and vibrations so to demonstrate compliance with the NSW Environment Protection Authority's Noise Control Guideline – Construction Site Noise.

*Note: The site works need not take place prior to the issue of the Occupation Certificate. (DA09/131/02)*

28 All future development to the allotments within the subdivision shall form the subject of further development applications to Council.

29 Care must be taken to protect Council's roads, including the made footway, kerbs, etc and where plant and vehicles enter the site. Protecting constructions shall be maintained in a state of good repair and condition throughout the course of construction and kept in a safe condition. The area must be safe for pedestrian traffic at all times. Any damage to Council's road reserve will be repaired and the full cost shall be borne by the applicant.

30 A sign must be erected in a prominent position on any work site on which work is being carried out:

- (a) Stating that unauthorized entry to the work site is prohibited;
- (b) Showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
- (c) The Development Approval number; and
- (d) The name of the Principal Certifying Authority including an after hours contact telephone number;
- (e) Any such sign is to be removed when the work has been completed.

31

- (a) All excavations and backfilling shall be executed safely and in accordance with appropriate professional standards; and
- (b) All excavations shall be properly guarded and protected to prevent them from being dangerous to life or property.

- 32 The site to which this approval relates must be adequately fenced or other suitable measures employed that are acceptable to the Principal Certifying Authority to restrict public access to the site and building works. Such fencing or other measures must be in place before the approved activity commences.
- 33 All possible and practicable steps shall be taken to prevent nuisance to the inhabitants of surrounding neighbourhood from wind blown dust, debris, noise and the like.
- 34 The development shall be conducted in such a manner as not to interfere with or materially affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, vapour, steam, soot, ash, dust, particulate matter, waste water, waste products or other impurities which are a nuisance or injurious to health.
- 35 If the works involved:
- (a) Is likely to cause pedestrians or vehicular traffic in a public place to be obstructed or rendered inconvenient; or,
  - (b) Building works involves the enclosure of a public place;
  - (c) A hoarding or fence must be erected between the work site and the public place.
  - (d) If necessary an awning is to be erected sufficient to prevent any substance from or in connection with the work falling into the public place.
  - (e) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to person(s) in the public place.
  - (f) Any such hoarding, fence or awning is to be removed when the work has been completed.
  - (g) Suitable consent shall be obtained from Council prior to the erection of any hoarding at the property.
- 36 Throughout the construction period, Council's warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A copy of the sign is available from Council's Customer Service Counter.
- 37 Existing structures and or services on this and adjoining properties shall not be endangered during any excavation or construction work associated with the above project. The applicant is to provide details of:
- (a) Any shoring, piling, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilize any adjacent structures; and

- (b) 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 an adjoining allotment of land the person causing the excavation to be made:
  1. Must preserve and protect the building from damage; and,
  2. If necessary, underpin and support such building in an approved manner.

38 Works associated with the subdivision shall be carried out between the following hours:

- (a) Monday to Friday, inclusive 7:00am to 5:00pm
- (b) Saturday 8:00am to 4:00pm
- (c) Sundays and Public Holidays No work

This condition also applied to the movement of vehicles to and from the site during the carrying out of the subdivision works.

39 During the construction and demolition stages the following shall be complied with:

(a) Construction Noise

1. Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.

(b) Level Restrictions

1. Construction period of 4 weeks and under:
  - (1) The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20dB(A).
  - (2) Construction period greater than 4 weeks and not exceeding 26 weeks: the L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10dB(A).

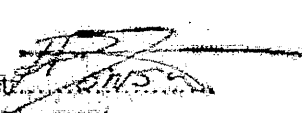
(c) Time Restrictions

1. Monday to Friday 07:00am to 05:00pm
2. Saturday 08:00am to 04:00pm
3. No Construction to take place on Sundays or Public Holidays.

(d) Silencing

All possible steps should be taken to silence construction site equipment.

- 40 The applicant shall make a separate application to Council's Customer Service Counter to construct (or reconstruct or retain existing) a vehicular crossing (either using Council or own forces) to all vehicular entry points to the site. All vehicular crossings which were shown on submitted plans shall be in the correct location. All redundant vehicular crossings shall be removed and replaced to fit the main footpath cross-section.
- 41 The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the Development Application registered in Council's records as Development Application No. 09/131 dated as 15 October 2008 and as amended by *Section 96(1) Application received by Council on 18 March 2009 (DA09/131/01), and as amended by Section 96(1A) Application received by Council on the 6 May 2009 (DA09/131/02)* and that any alteration, variation, or extension to the use, for which approval has been given, would require further approval from Council.

  
Certified Mr Rodger Dowsett  
Director - Planning and Development