

Attachment B

**Applicant's Email Requesting Changes
to Draft Conditions**

From: [REDACTED]
To: [James Cooper](#)
Cc: [REDACTED]; [Eileen Leather](#)
Subject: FW: Registration to address the Local Planning Panel - Wednesday 17 May 2023 - 5pm start (169 Darlinghurst Road)
Date: Monday, 15 May 2023 9:11:40 AM
Attachments: [image001.png](#)
[RE D2022911 169 Darlinghurst Road NRF-APAC.FID3121714 - revised draft planning agreement.mso](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)

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Dear James,

Thanks for your efforts with advancing the DA for 169 Darlinghurst Road – all sincerely appreciated. It was clearly pleasing to read in the business papers the supportive recommendation for the local planning panel this week. During the course of the morning and further to my voicemail message on Friday, could we please discuss with you a couple of recommended updates to the conditions?

Condition 5

As a part of the VPA negotiations, the parties agreed that the requirement for the Positive Covenant would be removed (please see **attached** email from Greg Longmuir on 30 January 2023). On this basis, the VPA no longer refers to it. A condition update to the following effect would be appropriate:

(5) ~~POSITIVE COVENANT AND ADVERTISING DEED~~

Prior to any Occupation Certificate being issued, ~~a positive covenant, in the form specified in the Planning Agreement, is to be registered on title of the land to which this consent relates requiring all the operators of the advertisement to enter into an Advertising Deed with the Council in the form specified in the Planning Agreement.~~ ~~The covenant must be created at no cost to Council.~~

Deferred commencement conditions

In the first instance, it would be preferable to see the matters listed as conditions of consent, requiring the provision of the VPA in executed form to the Council prior to grant of a Construction Certificate. That said, an updated condition would be workable.

The issue is that under the VPA, it is actually the City which takes the steps necessary to register the VPA on title, not JCD. Thus clause 1(b) is not really within our control. Registration is only security for the performance of the obligations in the VPA and should not be a pre-condition to commencement. Under clause 7.1 of the VPA, it is the City that is the party who will be taking the necessary steps to register the VPA on the title of the land. The Developer also cannot compel the City to execute the VPA. Both of these are not in the control of the Developer. Thus the deferred commencement clause should simply require the Developer to provide to the City a VPA executed by the Owner and the Developer.

From here

Would you mind please giving me a call during the morning to discuss? We have registered to speak at the LPP meeting on Wednesday, however understand from Eileen Leather, as Committee Secretary, that any written submission ought to be closed out as a matter of earliest priority – with a verbal acceptance of a written submission this morning, being beyond the ordinary 5pm Friday deadline.

Many thanks,
Simon