

5 April 2013  
1014

The General Manager  
Warringah Council  
Civic Centre, 725 Pittwater Road  
DEE WHY NSW 2099

Attention: David Auster, Development Assessment Officer

**SECTION 96(1A) APPLICATION FOR MODIFICATION  
8 HOMESTEAD AVENUE, COLLAROY (DA 2010/2047 - STAGED DEVELOPMENT TO  
PROVIDE HOUSING FOR OLDER PEOPLE OR PEOPLE WITH DISABILITIES)**

Dear Mr Auster

This letter is written on behalf of The Salvation Army of NSW (Property Trust) (the owner and applicant). It describes a Section 96 proposal to make a modification to Stage 1 of the above consent granted by the Sydney East Joint Regional Planning Panel (the **JRPP**). The Section 96 proposal involves a minimal environmental impact, pursuant to section 96(1A) of the *Environmental Planning and Assessment Act, 1979 (EPA Act)*. Warringah Council (the **Council**) is the consent authority for Section 96(1A) applications.

The Section 96 proposal seeks approval to modify the wording of conditions 53 to 57 of the development consent for DA 2010/2047 (the **consent**). These conditions set out Council's legal documentation requirements for the on-site detention (**OSD**), including creation of a positive covenant.

This letter identifies the consent and describes and assesses the Section 96 proposal. It is accompanied by the following documents:

- A completed section 96 application form and application fee
- Preliminary copy of the positive covenant for the OSD system (to be issued to Council once the civil drawings are complete).

**THE CONSENT**

Application Reference	DA 2010/2047 (2010SYE116)
Address	8 Homestead Avenue, Collaroy
Development	Staged development to provide Housing for Older People or

People with Disabilities, including subdivision and ancillary site works. The stages comprise:

**Stage One** - Residential Aged Care (**RAC**) Facility for 126 beds in a townhouse style clustered development including; chapel/hall, internal café, communal gardens, disabled access facilities, 37 car parking spaces, loading facilities, administration and services rooms, new internal roads, landscaping, stormwater infrastructure and subdivision.

**Stage Two** – concept approval for Independent Living Units (**ILUs**) including 25 apartment style units within a single building, including 37 basement and ‘at grade’ carparking spaces.

Date of determination      20 April 2011 (consent operates from 2 May 2011)

Section 96 modifications      Section 96(1A) modification approved 14 February 2012 - Minor design changes to the building layout.

#### **PROPOSED MODIFICATIONS – CONDITIONS 53 TO 57**

Conditions 53 to 57 of the consent set out Council's requirements for the OSD system, including creation of a positive covenant. The conditions require all of the required information to be submitted to the Principal Certifying Authority prior to release of any interim/final Occupation Certificate. The Section 96 proposal seeks approval to modify the timing for submission of the information to the final Occupation Certificate. The minor modifications are required as completion of the OSD work on-site has been delayed by heavy rain.

All stormwater works relating to OSD required by conditions 53 to 57, with the exception of the registration of the positive covenant, will be completed and submitted to Council prior to issue of the Interim Occupation Certificate.

This includes the installation of the OSD, Work-As- Executed drawings certified by a registered surveyor, compliance certification issued by the Civil Engineer and submission to Council of the completed request form 13PC including terms of the positive covenant (as noted in the DA conditions to Council's standard requirements).

It is anticipated that there will be only one interim Occupation Certificate and that the final Occupation Certificate will be issued upon registration of the covenant for OSD system and after submission to Council of a certified copy of the certificate of title showing the covenant.

The modifications sought by the Section 96 proposal are as follows (new words are shown in red):

### **53. Authorisation of Legal Documentation Required for On-site Stormwater Detention**

*The original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works.*

*Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate (except for registration of the positive covenant and/or restriction as a user which is to occur prior to issue of the final Occupation Certificate).*

**Reason:** *To create encumbrances on the land. (DACENF01)*

### **54. Registration of Encumbrances for On-site Stormwater Detention**

*A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.*

*Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim /final Occupation Certificate (except for registration of the positive covenant and/or restriction as a user which is to occur prior to issue of the final Occupation Certificate).*

**Reason:** *To identify encumbrances on land. (DACENF02)*

### **55. On-Site Stormwater Detention Compliance Certification**

*Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.*

*Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim/final Occupation Certificate (except for registration of the positive covenant and/or restriction as a user which is to occur prior to issue of the final Occupation Certificate).*

**Reason:** *To ensure stormwater disposal is constructed to Council's satisfaction. (DACENF10)*

### **56. Positive Covenant for On-site Stormwater Detention**

*A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's*

*standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Warringah Council's delegate prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.*

*Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim /final Occupation Certificate (except for registration of the positive covenant and/or restriction as a user which is to occur prior to issue of the final Occupation Certificate).*

**Reason:** *To ensure ongoing maintenance of the on-site stormwater detention system. (DACENF12)*

#### **57. Creation of Positive Covenant and Restriction as a User**

*Where any conditions of this Consent require the creation of a positive covenant and/or restriction as a user, the original completed request forms, (Department of Lands standard forms 13PC and/or 13RPA), shall be submitted to Warringah Council for authorisation.*

*A certified copy of the documents shall be provided to Warringah Council after final approval and registration has been affected by the "Department of Lands".*

*Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Interim /Final Occupation Certificate (except for registration of the positive covenant and/or restriction as a user which is to occur prior to issue of the final Occupation Certificate).*

**Reason:** *To identify encumbrances on land. (DACENF14)*

### **SECTION 96(1A) CONSIDERATIONS**

Section 96(1A) of the EPA Act relates to modifications involving minimal environmental impact. It states that a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application ....., and*
- (d) it has considered any submissions made concerning the proposed modification ....*

*Subsections (1), (2) and (5) do not apply to such a modification.*

In accordance with these tests:

- The Section 96 proposal will have a minimal environmental effect as there would be no change to the external appearance of the approved development. The external impacts of the development (stormwater, visual impact, overshadowing, noise, privacy, traffic, bushfire, riparian restoration etc) will be unchanged.
- The modified development would be substantially the same as “*the development for which consent was originally granted and before that consent as originally granted was modified*” as the Section 96 proposal does not alter the form or content of the development.
- As the external impacts of the Section 96 proposal are negligible, Council need not notify the application for modification.

### Minimal Environmental Effect

Pursuant to Section 96(3) of the EPA Act:

*In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.*

As there are no changes to the approved yield/density or any external alterations, the Section 96 proposal is of minimal environmental effect. Notably, the proposed modifications do not alter the compliance of the development with the following relevant planning instruments:

- Warringah Local Environmental Plan 2000 (**WLEP 2000**)
  - Warringah Local Environmental Plan 2009 (**WLEP 2011**)
  - Draft Warringah Development Control Plan (**WDCP**)
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- Warringah Section 94A Contributions Plan
  - SEPP (Housing for Seniors or People with a Disability) 2004 (**SEPP (HSPD)**)
  - SEPP (Infrastructure) 2007
  - SEPP (Building Sustainability Index: BASIX) 2004 (**BASIX**)
  - SEPP No. 65 – Design Quality of Residential Flat Development (**SEPP 65**)
  - SEPP No. 55 – Remediation of Land (**SEPP 55**)

### CONCLUSION

As the Section 96 proposal satisfies the tests listed at Section 96(1A) of the EPA Act, it is worthy of consent. Please feel free to contact the undersigned should you require any additional information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Robinson', with a long, sweeping horizontal line extending to the right.

Sandra Robinson BTP Hons, MPIA  
*Director*