

18 April 2016

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

**Re: Construction of a Residential Care Facility, 22 Homestead Avenue, Collaroy
Section 96(1A) application for modification (Development Application 2015/0931)**

This letter is written on behalf of The Salvation Army NSW (TSA). It describes a s. 96(1A) application for modification of the consent for Development Application (DA) 2015/0931, which approved the construction of a residential care facility (RCF) at 22 Homestead Avenue, Collaroy (**the site**).

The Section 96 proposal seeks consent to delete condition 7 of the consent for DA 2015/0931 which requires the payment of a Section 94A contribution.

This letter identifies the consent and describes and assesses the Section 96 proposal. It is accompanied by a completed Section 96 application form and application fee.

THE CONSENT

Application Reference	2015/0931
Address	22 Homestead Avenue, Collaroy
Development	Construction of a Residential Care Facility
Date from which consent operates	27 January 2016

PROPOSED MODIFICATIONS TO THE CONDITIONS

The Section 96 proposal seeks consent to delete condition 7 of DA 2015/0931 which requires the payment of a Section 94A contribution of \$133,945.

As demonstrated by the attached tax invoice, the Section 94A payment was made on 1 March 2016. If this Section 96 application is approved, the TSA would seek a refund from Council.

JUSTIFICATION FOR SECTION 96 PROPOSAL

Pursuant to Warringah Section 94A Development Contribution Plan, Council levies a Section 94A contribution equivalent to 1% of the cost of development.

Council's Development Contributions Plan (p. 6) sets out categories of development that are **exempt** from the requirement to pay a Section 94A contribution, as noted below (using our emphasis):

- (1) Development Applications and complying Development Applications whose total development cost is less than \$100,001*
- (2) Applications lodged under Section 96 of the EP&A Act 1979 to modify condition/s of an existing consent*

(3) *Development Applications and Complying Development Certificate Applications for public purposes as proposed by:*

- a) *Council, that involve the use of land classified as Community or Operational under the Local Government Act 1993 or as Crown Land under the Crown Lands Act 1989*
- b) *Non-profit organisations, as defined by the Australian Taxation Office, on behalf of, or in partnership with Council*
- c) *Government agencies*
- d) *Public utility providers.*

Development which complies with the Ministerial Direction under s94E dated 10th November 2006 and includes development:

- (1) *For the purpose of disabled access*
- (2) *For the sole purpose of affordable housing*
- (3) *For the purpose of reducing the consumption of mains-supplied potable water, or reducing the energy consumption of a building*
- (4) *For the sole purpose of the adaptive reuse of an item of environmental heritage*
- (5) *Other than the subdivision of land, where a condition under section 94 of the Act has been imposed under a previous Development Application Consent relating to the subdivision of the land on which the development is proposed to be carried out.*

For the following reasons, and having reviewed the above extract, an exemption from the requirement to pay a Section 94A contribution is appropriate in this instance:

1. Non-profit organisation

The Trustees for the Salvation Army (NSW) Property Trust is a legally registered charitable institution, as confirmed in the attached notices from the Australian Tax Office and Australian Charities and Not-for-profits Commission.

Even though the approved development is not *“to be carried out on behalf of, or in partnership with Council; the principles for exempting non-profit organisations”* as set out at in the first highlighted clause in the above extract from Warringah Section 94A Development Contribution Plan, a Section 94A contribution exemption would be sound and appropriately applied in this instance.

2. Affordable housing

TSA has advised that:

- The resident concessional /supported ratio at Pacific Lodge is **60%** - a Government accommodation supplement of \$35.37 per day is received for the supported residents
- Rooms at Pacific Lodge are advertised on the Government My Aged Care website. There are three advertised prices for room as follows:
 - 14 rooms at \$350,000 or \$60.22 per day
 - 19 room at \$300,000 or \$51.62 per day
 - 19 rooms at \$150,000 or \$25.81 per day.

The *Environmental Planning and Assessment Act 1979 (EP&A Act)*, cl. 4 defines *affordable housing* as follows:

affordable housing means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.

The households/residents that will occupy the approved RCF on the site are likely to fall within the above definition of a *very low income household, low income household or moderate income household*. Importantly, the residents would have limited housing options if not supported by the TSA.

As noted in the second highlighted clause in the above extract from Warringah Section 94A Development Contribution Plan, affordable housing is exempt from a requirement to make a Section 94A contribution. This exemption should be applied in this instance.

3. Limited use of community and recreation facilities funded through Section 94A

In addition to the no-profit status of TSA and affordable housing character of the approved RCF which each make the development eligible for a Section 94A exemption:

- All of the approved beds are for aged or disabled residents. The residents will rarely utilise the community and recreation facilities included in the Contribution Plan works schedule as they have limited independent ability to leave the site. Given this, there is almost no nexus between the residents and additional services
- The approved RCF will operate as part of the Elizabeth Jenkins Place Aged Care Plus Centre (EJP). EJP is self-sufficient and will satisfy almost all of the residents' cultural, recreational, social, spiritual, health, personal care and other needs.

Given the above, it is unreasonable to impose a condition on the consent requiring the payment of a section 94A contribution.

SECTION 96(1A) CONSIDERATIONS

Section 96(1A) of the EP&A 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:

- it is satisfied that the proposed modification is of minimal environmental impact, and*
- 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*
- it has notified the application, and*
- 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 minimal environmental impact as there is no change proposed to the content or form of the approved development. Additional, approval of the Section 96 proposal would not impose a strain on Council's community and recreation facilities given that resident needs will be satisfied by on-site facilities and services.

The modified development would also 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 only relates a condition of consent (and payment of a levy).

MINIMAL ENVIRONMENTAL EFFECTS

Pursuant to Section 96(3):

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 is no change to the form, content or impact of the development; the Section 96 proposal would have a minimal environmental effect.

CONCLUSION

The Section 96 proposal seeks consent to delete condition 7 of DA 2015/0931 which requires the payment of a Section 94A contribution of \$133,945. This modification is appropriate in this instance as:

1. The approved RCF is to be developed by TSA, a non-profit organisation.
2. The households/residents that will occupy the approved RCF are likely to fall within the definition of a *very low income household, low income household or moderate income household*. Importantly, the residents and would have limited housing options if not supported by the TSA. Affordable housing is exempt from a requirement to make a Section 94A contribution.
3. All of the approved beds are for aged or disabled residents. The residents will rarely utilise the community and recreation facilities included in the Contribution Plan works schedule as they have limited independent ability to leave the site. Additionally, the approved RCF will operate as part of EJP which is self-sufficient and will satisfy almost all of the residents' cultural, recreational, social, spiritual, health, personal care and other needs.

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

Yours sincerely



Sandra Robinson BTP (Hons) MPIA
Director

Enc.

- Tax Invoice
- Confirmation of non-profit status
- Form and Fee