

Memo

Environment

To:	Rodney Piggott , Development Assessment Manager
From:	Catriona Shirley, Planner
Date:	11 December 2020
Application Number:	Mod2020/0623
Address:	Lot 2 DP 543012 , 4 Cross Street BROOKVALE NSW 2100
Proposed Modification:	Modification of Development Consent DA2020/0433 granted for the construction of a building for use as a storage premises

Background

The above-mentioned development consent was granted by the Northern Beaches Local Planning Panel on 16 September 2020 for the demolition works and construction of a building for the purposes of a "storage premises", specifically self-storage units ("Rent-A-Space") at 4 Cross Street Brookvale.

Details of Modification Application

Under Section 4.55(1) of the EPA Act 1979, a consent containing an error or mis-description may be amended. The Northern Beaches Community Participation Plan does not require the notification of Section 4.55(1) modification applications as they are considered to be of minimal environmental impact.

The Northern Beaches Local Planning Panel (NBLPP) approved development application (DA2020/0433) on the 16 September 2020. Included within the conditions of consent was the Condition Number 38 which requires a positive covenant to be created over the require stormwater treatment measures. A particularly important condition as the site is located over a groundwater aquifer that feeds Manly Lagoon, a highly sensitive receiving waterway.

However, the applicant seeks to amended the wording of Condition Number 38, to remove the reference of "interim" Occupational Certificate, as interim occupation certificates became obsolete from 1 December 2019 by virtue of the commencement of certain amendments to Part 6 of the Environmental Planning and Assessment Act 1979 (EPA Act), in accordance with the Environmental Planning and Assessment Amendment (Building and Subdivision Certification) Regulation 2019 (Regulation), made on 30 August 2019.

As a result application seeks to modify condition(s) No. 38. Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures, which reads as follows:

38. Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

Consideration of error or mis-description

Consideration of a wording change of Condition Number 38, to remove to remove the reference of "interim" Occupational Certificate, as interim occupation certificates became obsolete from 1 December 2019 is supported.

Accordingly, the conditions to be added to the consent are to read as follows:

38. Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifying Authority prior to the issue of any final/whole Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

Conclusion

It is considered that the modification is minor in nature and consistent with the provisions of section 4.55(1) of the EPA Act 1979 and is therefore recommended for approval.

Recommendation

THAT Council as the consent authority approve Modification Application No. Mod2020/0623 for Modification of Development Consent DA2020/0433 granted for the construction of a building for use as a storage premises on land at Lot 2 DP 543012, 4 Cross Street, BROOKVALE, as follows:

A. Modify Condition Number 38 Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures to read as follows:

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifying Authority prior to the issue of any final/whole Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Catriona Shirley, Planner

The application is determined on 11/12/2020, under the delegated authority of:



Rodney Piggott, Manager Development Assessments