

Memo

Planning & Development Services

To: Steven Findlay
Team Leader Development Assessment

From: Amy Sutherland
Senior Development Assessment Officer

Date: 11 May 2009

Subject: Section 96(1) Application to amend *Condition 10 - Development/Construction Security Bond* and *Condition 14 - Section 94A Contribution*

Address: 255 Condamine Street, Manly Vale

Link: DA2007/0474 and MOD2009/0113

Modification of Application

Development Application No.2007/0474 for the demolition of the existing timber building and construction of a first floor addition to the existing (partially completed) ground floor level of a building previously approved by Council, and use as a bulky goods showroom at 255 Condamine Street, Manly Vale was approved by Council on 24 June 2008.

Modification Application No.2009/0113 seeks consent to correct minor typographical errors in Conditions 10 and 14 of the consent for Development Application No.2007/0474 which were made by Council during the preparation of the consent.

The inspection fee in Condition 10 '*Development/Construction Security Bond*' should be \$200 not \$2000. The Section 94 Administration fee in Condition 14 '*Section 94A Contribution*' should be \$50 not \$500.

The Applicant questioned why a Section 94A Contribution was payable given the estimated cost of works is \$100,000.

The development application was lodged on 1 June 2007. The application was considered by the Independent Hearing and Assessment Panel (IHAP) on 4 June 2008. The application was approved by Council on 24 June 2008.

The *Warringah Section 94A Development Contributions Plan* (adopted 14 November 2006 and effective from 4 December 2006) applied at the time Development Application No. 2007/0474 was lodged and determined. Under this plan, a Section 94A levy of 1% of the estimated cost of work was payable for all development applications whose total costs amounted to \$100,000 or greater.

The *Warringah Section 94A Development Contributions Plan* was amended on 10 June 2008 and became effective from 1 July 2008. The amended plan does not require the payment of Section 94A contributions for development applications whose total costs amount to less than \$100,001.

Whilst the current plan does not require a Section 94A levy to be paid for developments with an estimated cost of work of less than \$100,001, the application was lodged and determined prior to this plan coming into effect. The Section 94A levy which is to be paid is that which applied at the time the application was determined.

Section 96(1)

In accordance with Section 96(1) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act), a consent authority may modify a development consent it has granted which contains an error, misdescription or miscalculation.

Warringah Development Control Plan does not require the notification of Section 96(1) modification as it is considered to be of minor change not affecting the development and therefore the modification application has not been notified.

The errors contained within Condition 10 and Condition 14 should be corrected in accordance with the provisions of Section 96(1) of the EP&A Act. Accordingly, it is recommended that the Section 96(1) application MOD2009/0113 be approved and the consent for Development Application No. 2007/0474 be modified.



Recommendation

That the Section 96 Application No. 2009/0113 to modify Development Consent No. 2007/0474 for the demolition of the existing timber building and construction of a first floor addition to the existing (partially completed) ground floor level of a building previously approved by Council, and use as a bulky goods showroom at Lot 8, DP 604034, 255 Condamine Street, Manly Vale be approved and the consent be modified in the following manner;

1. Modify Condition 10 Development/Construction Security Bond to read as follows;

10. Development/Construction Security Bond

A bond (determined from cost of works) of \$2,000 must be deposited with Council and an inspection fee paid of \$200 prior to the issue of any Construction Certificate. This bond is to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

Reason: To ensure adequate protection to Council infrastructure. **(DACECdcsb)**

2. Modify Condition 14 Section 94A Contribution to read as follows;

14. Section 94A Contribution

\$1000 is to be paid to Warringah Council as a Section 94A levy prior to the issue of the Construction Certificate.

This amount has been calculated using the Warringah Section 94A Development Contributions Plan. The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

The basis for the contributions is as follows:

Warringah Section 94A Development Contributions Plan			
Contribution based on total development cost of		\$100,000.00	
Contribution - all parts Warringah	Levy Rate	Contribution Payable	Council Code
Total S94A Levy	0.95%	\$950.00	Rams
S94A Planning and Administration	0.05%	\$50.00	Rams
Total	1.0%	\$1,000.00	

Reason: To retain a level of service for the existing population and to provide the same level of service for the population resulting from new development. **(dacgcS94ac)**

Recommended for approval by:

Determined under the delegated authority of:

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Amy Sutherland
Senior Development Assessment Officer

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Steve Findlay
Team Leader Development Assessment