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16 August 2016

Mr Phil Lane
Senior Planner
Northern Beaches Council - Development & Compliance Services
725 Pittwater Road
Dee Why NSW 2099

Dear Phil,

DA2008/1741 - WARRINGAH MALL, SECTION 96 (1A) APPLICATION - FLOOD BARRIER WORKS AND TIMING OF OCCUPATION CERTIFICATES

1. INTRODUCTION

This Section 96 (1A) application seeks to modify development consent under DA2008/1741. It has been lodged on behalf of Scentre Group and relates to Warringah Mall, 145 Old Pittwater Road, Brookvale.

This application seeks to:

- Replace the approved Engineering Plans with updated plans that align with the stormwater augmentation works that are currently being undertaken (or have recently been constructed) on the site under DA2008/1742.
- Make minor modifications to the wording of condition no. 52, 53, 54, 58, and 60 to facilitate the issuing of relevant interim Occupation Certificates (OC) and enable the timely operation of previously approved retail components that are ready to begin operation.

This letter should be read in conjunction with the following supporting information:

- Proposed Modification to Condition Wording for DA2008/1741 (**Appendix A**);
- Civil Engineering letter, *prepared by Cardno* (**Appendix B**); and
- Amended Engineering Drawings, *prepared by Cardno* (**Appendix C**);

The following sections provide a description of the proposed modification and address the relevant matters for consideration under Section 96 (1A) and Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act).

2. APPROVED DEVELOPMENT

Development application DA2008/1741 was approved on 28 April 2010 for the following:

“Partial demolition of existing buildings, construction of an extension to the Warringah Mall Shopping Centre including two levels of retail floorspace, a multi-level car park and associated stormwater works.”

Of relevance to this modification application, DA2008/1741 was subsequently modified under:

- **MOD 2014/0079** - to include an updated set of Engineering Plans, and
- **MOD2014/0200** - to modify the conditions of consent relating to the timing of issue of relevant Interim/Final Occupation Certificates.

The following sections describe the proposed modification to the conditions of consent for DA2008/1741.

3. PROPOSED MODIFICATION

3.1. UPDATED ENGINEERING PLANS

As noted in the Civil Engineering letter at **Appendix B**, the Stage 1 stormwater augmentation works for Warringah Mall have been undertaken in accordance with development consent under DA2008/1742 (as modified).

This has resulted in discrepancies between the stormwater augmentation works that were approved under DA2008/1741, and what has been constructed on the site.

To ensure consistency of documentation, the proposed modification seeks to replace the approved Engineering Plans under DA2008/1741 with updated plans that align with the DA2008/1742 stormwater augmentation works, and that are currently being undertaken (or have recently been constructed) on the site. It is noted that Construction Certificates have been issued for both DA2008/1741 and DA2008/1742 that accord with the Amended Engineering Plans at **Appendix C**.

The Civil Engineering letter at **Appendix B** provides a summary of the main changes between the originally approved DA2008/1741 stormwater augmentation works, and what has been constructed on the site. The letter concludes that updated design approach will have no adverse impact on adjacent properties.

3.2. OCCUPATION CERTIFICATE CONDITION WORDING

This application seeks to facilitate the release of relevant Interim OCs for the timely operation of retail components relating to the Stage 1 retail expansion of Warringah Mall approved under DA2008/1741.

The current wording of condition number 52, 53, 54, 58 and 60 restricts the Principal Certifying Authority (PCA) from issuing relevant Interim OCs until the certificates of title demonstrating creation of positive covenants/restrictions as to user for the Flood Wall Barrier System and Drainage Structures are submitted to the certifying authority.

The proposed modification seeks to defer the requirement to submit these certificates of title to the 'Final OC' stage, allowing the PCA to issue Interim OCs on completion of the Flood Wall Barrier System and Drainage Structures as detailed in the Engineering Plans. This will enable the timely operation of the retail components of the approved development, which have been completed and are ready for trading.

To ensure Council have comfort that the positive covenants/restrictions as to user will be registered on title, the wording of the conditions has been modified to include requirements to:

- **Submit to Council prior to issue of the relevant Interim OC** - the original request forms (Department of Lands standard forms 13PC and/or 13RPA) to create the positive covenants/restrictions as to user for the Flood Wall Barrier System and Drainage Structures; and
- **Submit to the Principal Certifying Authority prior to the issue of the Final Occupation Certificate** - a copy of the certificate of title demonstrating the creation of the positive covenants/restrictions as to user for the Flood Wall Barrier System and Drainage Structures.

It is also noted that **Condition 56** of DA2008/1741 provides the following:

56. Certification Civil Works

The Civil Engineer responsible for the supervision of the civil works shall certify that the completed works have been constructed in accordance with this consent and the approved Construction Certificate. A "work as executed" (WAE) plan certified by a registered surveyor and overdrawn in red on a copy of the approved civil works plans are to be provided to Council. The W.A.E. drawing shall show the alignment, depth and grade of the stormwater drainage pipelines, easement and associated structures including all flood wall barrier systems.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the relevant interim / final Occupation Certificate.

Reason: To ensure compliance of drainage works with Council's specification for engineering works. (DACENF06)

This condition of consent will give Council assurance that the Flood Wall Barrier System will be completed prior to the issue of the relevant Interim Occupation Certificate for the retail components approved under DA2008/1741, ensuring the required minimum 500 mm freeboard to the new retail building will be achieved before operation commences.

3.3. MODIFICATION OF CONDITIONS

To enable the modifications as described under **Section 3.1** and **Section 3.2**, it is proposed to modify the wording of the following conditions of DA2008/1741:

- **Condition 1B:** Modification of Consent – Approved Plans and supporting Documentation
- **Condition 52:** Authorisation of Legal Documentation Required for Flood Wall Barrier System
- **Condition 53:** Registration of Encumbrances for Flood Wall Barrier System
- **Condition 54:** Restriction as to User for Flood Wall Barrier System
- **Condition 58:** Positive Covenant for Drainage Structures
- **Condition 60:** Creation of Positive Covenant and Restriction as a User

The specific word changes sought for each condition is provided in **Appendix A**.

4. SECTION 96(1A) ASSESSMENT

The proposed modification is sought under Section 96(1A) of the Act.

Council as the consent authority may approve an application to modify a development consent where it is satisfied that the proposed modification will satisfy the elements of Section 96(1A), which the proposed modification is assessed against below.

4.1. MINOR ENVIRONMENTAL IMPACT

In accordance with Section 96 (1A)(a) of the Act, the proposed modification is of minor environmental impact because:

- The works described within the updated Engineering Plans are aligned with the consent under DA2008/1742;
- The works described in the updated Engineering Plans will not have an adverse impact on adjacent properties;
- The proposed wording changes do not alter the requirements of the conditions of consent, and are limited to changes to the timing of registration of positive covenants/restrictions as to user; and
- The proposed modifications result in a proposal that remains consistent with the relevant environmental planning instruments and provisions as detailed in the original Development Application (DA 2008/1741).

4.2. SUBSTANTIALLY THE SAME DEVELOPMENT

In accordance with Section 96(1A)(b), the proposed development is considered substantially the same as that approved because:

- The proposed modification does not increase the Gross Lettable Floor Area (GLFA) of the shopping centre;
- The proposed modification will not alter the approved pedestrian and vehicle access arrangements to the site; and
- The proposed modification will result in the overall scale of the Stage 1 development remaining unchanged, except for minor modifications to the stormwater augmentation works within the site to align with the approved works under DA2008/1742.

4.3. NOTIFICATION OF THE APPLICATION AND PUBLIC SUBMISSIONS

Council have discretion to determine whether notification of applications made under Section 96(1A) is required. Given the minor nature of the proposal which has no impact on local residents or land owners, it is considered that notification is not necessary in this instance.

5. SECTION 79C ASSESSMENT

Section 79C(1) of the EP&A Act sets out the heads of consideration for any application under Part 4 of that Act.

5.1. ENVIRONMENTAL PLANNING CONTROLS

The proposal is consistent with the provisions of the *Warringah Local Environmental Plan 2011* and *Warringah Development Control Plan 2011* as detailed in the original application.

5.2. LIKELY IMPACTS

As concluded by the Civil Engineering letter at **Appendix B**, updated design stormwater augmentation design approach will have no adverse impact on adjacent properties, and has been done to ensure that the approved civil works under DA2008/1741 and DA200/1742 are aligned with each other.

Similarly, modifying the timing of registration of positive covenants and restrictions as to user to the Final OC stage will enable Interim OCs to be issued for retail components that are currently ready to be occupied and begin operation. This will enable the timely opening of new retail components at Warringah Mall, providing positive benefits to the local area in terms of retail choice and employment opportunities.

5.3. SUITABILITY OF THE SITE

The proposed modifications do not change the suitability of the site for the approved development.



5.4. PUBLIC INTEREST

The proposed modifications are consistent with the approved development and allows the timely delivery and operation of retail uses on the site in line with the approval under DA2008/1741 and 'Part G - Warringah Mall' of the *Warringah DCP 2011*, further enhancing Warringah Mall's status as a retail centre of sub-regional significance.

6. CONCLUSION

The proposal has been assessed against the relevant provisions of the Act and will have minimal environmental impact.

The modification will not have any long term impacts on the bulk, scale or appearance of the approved development and is substantially the same development as that approved under DA2008/1741.

The amendments to the Engineering design will have no adverse impact on adjacent properties, and have been done to ensure that the approved civil works under DA2008/1741 and DA200/1742 are aligned with each other.

The proposed condition wording modifications will enable the timely opening of new retail uses at Warringah Mall as part of the much anticipated Stage 1 retail expansion, providing positive benefits to the local area in terms of retail choice, shopping experience and employment opportunities.

These changes are entirely positive and will not introduce any adverse social, economic or environmental impacts. In addition, the proposed modification is reasonable and will result in substantially the same development as originally approved. Therefore, this request to modify the consent should be supported and approved by Warringah Council.

If you have any questions please don't hesitate to contact me at 8233 9940 or vprabhu@urbis.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Vijay Prabhu", written over a horizontal line.

Vijay Prabhu
Senior Consultant
Urbis