

28 August 2014

Steven Findlay  
Development Assessment Manager  
Warringah Council  
725 Warringah Road  
DEE WHY NSW 2099

Dear Steven,

## DA2008/1741 – Warringah Mall, Section 96(1A) Application

### 1 Introduction

This letter has been prepared to accompany a Section 96(1A) application lodged on behalf of Westfield Limited to modify development consent DA2008/1741 relating to Warringah Mall, 145 Old Pittwater Road, Brookvale. It provides a description of the proposed modification and consideration of matters of relevance under Section 96(1A) and Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act).

This application seeks a minor modification to the wording of condition number 49, 51 - 58, 60 - 61 and 63 to facilitate the issuing of interim Occupation Certificates (OC) for the staged operation of the car park. The proposed modifications will allow conditions of consent to be satisfied at relevant stages of construction with all identified conditions to be satisfied prior to the issuing of a final OC.

In support of the application, please find attached

- A completed Section 96 application form including landowner's consent.
- Payment of \$860 to Warringah Council
- Six copies of this letter
- A digital file containing the application

The proposal has been assessed against the relevant provisions of the Act and will have minimal environmental impact. The modification will not alter the use, bulk, scale or appearance of the development and is substantially the same development as that approved in DA2008/1741.

### 2 The 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.*

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

### 3 Proposed Modification

This application seeks to facilitate the release of interim OC for the staged operation of the car park prior with the identified conditions of consent to be satisfied at the relevant stages of OC or prior to issuing of a final OC. The proposed modification seeks to modify reference to '*prior to the issue of any interim or Final Occupation Certificate*' and replace it with '*prior to the issue of the relevant interim or Final Occupation Certificate*'

It is proposed to modify the wording of the following conditions of DA2008/1741

- Condition 49: Upgrading to Existing Myers Department store
- Condition 51. Sydney Water
- 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 55: Stormwater Disposal
- Condition 56: Certification Civil Works
- Condition 57: CCTV of Stormwater Drainage Works
- Condition 58 Positive Covenant for Drainage Structures
- Condition 60. Creation of Positive Covenant and Restriction as a User
- Condition 61 Required Planting
- Condition 63. Contamination Report Certification

The specific word changes sought for each condition is provided in **Attachment 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 as it:

- Will not alter the approved development in terms of its use, bulk, scale or appearance or the nature of the development
- Does not seek to alter the requirements of the conditions of consent with the extent of modification limited to facilitating the issuing of interim OCs

- Will not result in any impacts on local land owners or residents and the development remains suitable for the site as approved.
- Remains consistent with the relevant environmental planning instruments and provisions as detailed in the original application.

#### 4 2 SUBSTANTIALLY THE SAME DEVELOPMENT

In accordance with Section 96(1A)(b) of the Act, the proposed modifications will result in substantially the same development as that approved under DA2008/1741. This application seeks minor modification to the wording of the consent to allow for satisfaction of the identified conditions prior to the issuing of relevant interim Occupation Certificates. It will not alter the approved development in terms of its use, bulk, scale or appearance.

#### 4 3 NOTIFICATION OF THE APPLICATION AND PUBLIC SUBMISSIONS

Under Part A.7 of the *Warringah Development Control Plan 2011*, 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 (refer Section 5.1.2), it is considered that notification is not necessary in this instance.

### 5 Section 79C Assessment

#### 5 1 1 PLANNING CONTROLS AND GUIDANCE

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 1 2 LIKELY IMPACTS

The proposed modification will allow for appropriate conditions of consent to be satisfied at the relevant stages of construction and the issuing of relevant interim Occupation Certificates. The modification will facilitate the operation of car-parking areas to commence once relevant conditions have been met and an interim OC issued. This will assist in meeting parking demand during peak hours and the Christmas period prior to completion of all construction works and issuing of a final OC.

The proposed modification does not seek to alter the requirements of the conditions of consent merely the timing at which they are satisfied. Accordingly, the proposed modification will not result in any impacts on local land owners or residents

#### 5 1 3 SUITABILITY OF THE SITE

The proposed modification does not change the suitability of the site of the approved development

#### 5 1 4 PUBLIC INTEREST

The proposed modification is consistent with the approved development and allows for the retail expansion of Warringah Mall consistent with its status as a retail centre of sub-regional significance. The proposed modification will result in the increased provision of parking available to customer of the shopping centre during periods of peak demand.



6 Conclusion

Having regard to each of the matters considered above, the proposed modification is considered to be reasonable and appropriate. The proposed modification is minor in nature and results in substantially the same development as that approved, satisfies the requirements of Section 96(1A) and Section 79C of the Act and will not result in any unreasonable impacts.

Based on the above, we conclude that the proposed modification should be approved pursuant to the provisions of Section 96(1A) of the Act.

If you have any questions with regard to the application, please call the undersigned on (02) 8233 9900.

Yours sincerely,

A handwritten signature in black ink that reads 'S. Houston'.

Sarah Houston  
Senior Consultant

Attachment A Proposed Modification to Condition Wording for DA2008/1741



Attachment A Proposed Modification to Condition Wording for DA2008/1741

#### **49. Upgrading to Existing Myers Department store**

*The existing Myers Department store is to be upgraded so as to comply with the requirements of the Building Code of Australia and the report issued by 'Scientific Fire Services', report No.35405-ce/FEB/R1 dated 27/10/05. Such work is to be completed prior to the issue of any to the issue of any the relevant Interim or Final Occupation Certificate for the building.*

#### **51. Sydney Water**

*A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation*

*Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.*

*Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.*

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

#### **52. Authorisation of Legal Documentation Required for Flood Wall Barrier System**

*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 the relevant interim /final Occupation Certificate.*

#### **53. Registration of Encumbrances for Flood Wall Barrier System**

*A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the flood wall barrier system is to be submitted*

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

#### **54. Restriction as to User for Flood Wall Barrier System**

*A restriction as to user shall be created on the title over the flood wall barrier system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such restriction.*

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

### **55. Stormwater Disposal**

*The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.*

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

*(Note The following Standards and Codes applied at the time of determination:*

- a) Australian/New Zealand Standard AS/NZS 3500 3:2003 - Plumbing and drainage - Stormwater drainage*
- b) Australian/New Zealand Standard AS/NZS 3500 3 2003/Amtdt 1:2006- Plumbing and drainage - Stormwater drainage*
- c) National Plumbing and Drainage Code.)*

### **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 any the relevant interim / final Occupation Certificate.*

### **57. CCTV of Stormwater Drainage Works**

*The applicant shall submit to Council a CCTV inspection of the completed drainage works. The above CCTV inspection is to be provided on a DVD in mp2 file format, and should be clearly labelled and contain a menu outlining the pipe attributes.*

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

### **58. Positive Covenant for Drainage Structures**

*A positive covenant (under the provisions of Section 888 of the Conveyancing Act) is to be created on the title and accompanying 888 instrument, requiring the proprietor of the land to maintain the trunk stormwater drainage system traversing the site and all flood barrier systems required to provide the minimum 500 mm freeboard to the proposed retail development, in accordance with the standard requirements of Council.*

*The terms of the positive covenant are to be prepared to Council's standard requirements, which are available from Warringah Council. Warringah Council shall be nominated as the sole authority empowered to release, vary or modify such covenant. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the relevant interim / final Occupation Certificate*

#### **60. 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 the relevant Interim / Final Occupation Certificate.*

#### **61. Required Planting**

*Tree planting is to be implemented as indicated on the approved Landscape Plan. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any the relevant interim / final Occupation Certificate.*

#### **63. Contamination Report Certification**

*A site auditor, accredited by the Environmental Protection Authority (Department of Environment Climate Change and Water) under the Contaminated Land Management Act 1997, is to provide written certification that all that works/methods/procedures/control measures and recommendations detailed in the CEMP, relevant to the management of the contamination on the site, have been undertaken and completed*

*The written certification shall be submitted to the Principal Certifying Authority and Warringah Council prior to the issue of an the relevant Interim / Final Occupation Certificate.*