

27 June 2024

Alexander Keller  
Principal Planner  
Development Assessment – South Team  
Northern Beaches Council  
**PO Box 82 Manly NSW 1655**

Dear Alex,

**Additional Information and Condition Modification**  
**DA2023/0714 - Covenant Christian School 212 Forest Way, Belrose**

This letter has been prepared on behalf of Covenant Christian School (the applicant) in response to Northern Beaches Council's request for additional information (RFI) letter and in response to the draft conditions of conditions prepared for DA No.544/2023 (PAN-370252).

This letter supplements the information provided to the Northern Beaches Local Planning Panel and is provided for the Sydney North Regional Planning Panel's consideration ahead of the application's determination meeting on 17 July 2024.

**1. Amended and Additional Documentation**

**Table 1** identifies the drawings and documentation that have been amended from those originally submitted with the development application.

Table 1 Amended Documentation			
Ref Number	Drawing / Document Name	Revision	Date
<b>Architectural Plans prepared by Bow Gould Architects</b>			
DA_03	Ground Floor	E	27/06/24

**Table 2** identifies the additional documentation provided to supplement the information originally submitted with the development application and provided to the Northern Beaches Local Planning Panel.

Table 2 Additional Documentation			
Ref Number	Drawing / Document Name	Revision	Date
<b>Overland Flow Assessment prepared by Erbas Engineering Consultants</b>			
SW-0001	Stormwater Services Overland Flow Study	P1	25/06/24
<b>Other documentation</b>			
Statement for Building Development Application by Erbas Engineering Consultants			

**2. Proposed Amendments to Conditions**

The following draft conditions of consent are requested to be amended ahead of the application's determination by the Sydney North Regional Planning Panel:

- **Condition 21. Building Components and Structural Soundness**
- **Condition 23. Self Actuating flood gate – Restrictions as to User and Positive Covenant**



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The request would amend Condition 21 and delete Condition 23. Also, it is noted that the draft conditions contain minor grammatical and sequencing errors (e.g. condition 20 occurs twice). To correct these minor errors, it is requested that the conditions are subject to a final review, prior to final submission to the Regional Panel for approval.

## 2.1 Amendment to Condition 21

The amendment to Condition 21 is requested in order clarify the certification requirements for the built elements located up to the flood planning level of 158.88 AHD.

### Current

*B2 - A suitably qualified structural engineer is to certify of the new development up to the Flood Planning Level of 158.88m AHD. The depth, velocity, debris load, wave action, buoyancy and immersion must all be considered.*

### Proposed

*B2 - A suitably qualified structural engineer is to certify **that all** new development up to the Flood Planning Level of 158.88m AHD **has been constructed from flood compatible materials and is built to withstand a 1 in 100 year flood event, as described in the Site Flood Assessment by WMA Water (29 January 2024).***

The proposed amendment is considered to be suitable as it:

- Identifies the objective that the development must achieve; and
- Provides clear criteria against which the achievement of the objective must be assessed

## 2.2 Deletion of Condition 23

Condition 23 requires the applicant to create a positive covenant on the title that:

- Prohibits the removal or modification of the self-actuating flood gate; and
- Ensure that the flood protection offered by the self-actuating floodgate is continuous

The reason given for this condition is:

- To ensure the self-actuating flood gate is maintained to an appropriate operational standard.

However, in the circumstances of the application this is considered unreasonable and unnecessary as Condition 20 *Self-actuating flood gate – operation and maintenance plan* has been provided for the same reason and when complied with would ensure that the flood gates are maintained, operational and can be inspected on request. The reason given for Condition 23 is fulfilled by the requirements of Condition 20, and therefore the requirement to register a positive covenant is not necessary if Condition 20 is complied with.

In accordance with Condition 20, the flood gate is required to be installed and the maintenance plan in place prior to occupation of the building. Noting that there are no exempt development provisions in Chapter 3 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* that would allow removal of the flood gate, any alterations to the flood gate post occupation would require either:

- The preparation and submission of a S4.55 modification to DA2023/0714; or
- The preparation and submission of a new development application.

Both of which would require assessment and determination by Northern Beaches Council.

Due to this, the request to remove Condition 23 is consistent with case law (see *Squadron Pty Ltd AFT Garrison Unity Trust v Wyong Shire Council* [2007] NSWLEC 336 and *PDP (Darlinghurst Apartments) Pty Ltd v City of Sydney* [2005] NSWLEC 41) which has established that:

- Where the enforcement of the provisions of a development consent (via the EP&A Act) is sufficient, there is no need or justification to provide a covenant

Accordingly, the deletion of Condition 23 is considered supportable as:

- The installation, maintenance and operation of the flood gate must be confirmed prior to occupation of the development, in accordance with Condition 20.
- Condition 20, when complied with, has the same effect as Condition 23 without the need for a covenant to be established on the land.
- The development consent (following the removal of Condition 23) is adequately supported by enforcement provisions ensuring the attainment of the outcomes of the consent (via relevant provisions of the EP&A Act)
- Once installed, the self-actuating flood gates can't be removed without Council's approval.

### 3. Conclusion

This letter has been prepared on behalf of Covenant Christian School to address the requirements of Section 37 of the EP&A Regulations. The additional information, the requested modification to Condition 21 and deletion of Condition 23, pursuant to Section 4.15 (1) of the *Environmental Planning and Assessment Act (1979)* will result in no material change to the development's impacts to the natural and built environment; or a material change to the social and economic impacts in the locality.

As a result, the amended proposal will provide improved landscape, social and economic outcomes and the environmental impact assessment detailed in the Statement of Environmental Effects (SEE) prepared by EPM Projects remains valid.

Therefore, it is considered that the proposed development satisfactorily responds to the opportunities and constraints of the site and the relevant legislation and is worthy of approval in its amended form.

Please do not hesitate to contact the undersigned if you have any queries or require further information.

Yours sincerely,  
**EPM Projects**



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**Attachment A** – Architectural Plans  
**Attachment B** – Overland Flow Assessment  
**Attachment C** – Engineering Statement