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## MEMORANDUM

**DATE:** 15 September 2020

**TO:** Northern Beaches Local Planning Panel

**CC:** Anna Williams, Development Assessments Manager

**FROM:** Nic England, Development Assessment Officer

**SUBJECT:** Traffic Engineering Comments and requested amendment to Condition No.36

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Dear Panel,

### OVERVIEW:

The purpose of this memo is to clarify the commentary from Traffic Engineers on pages 13 and 14 of the Assessment Report and alter the Panel of a request from the applicant to amend Condition No.36 Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measure.

### DISCUSSION:

#### Traffic Engineer Comments

Council's Traffic Engineer raises no objection to the application, based on the amendments made. The commentary on pages 13 and 14 may be misconstrued to appear that no support is given to the proposal, through the presence of previous commentary. This however relates to the application in its original form, which the Traffic Engineers were not satisfied with. Hence, it is confirmed that the final advice from Traffic Engineers is that there is no objection to the proposal, subject to condition.

#### Condition No.36

This condition was applied at the request of Council's Project Leader-Water Management and reads:

*"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*



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*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."*

The applicant has requested that the last paragraph be amended to require that the creation of the covenant and restriction be undertaken before the final Occupation Certificate (OC), rather than any interim or final OC. The reason given is as below:

**Condition 36** – We would like to request an amendment to the wording of the highlighted section (see below) of this condition below to instead read "**prior to a final/whole Occupation Certificate**" and remove the word 'interim'. The process of registration is quite lengthy and we therefore request that this be deferred to the final Occupation Certificate phase of the development which still provides assurance that the certificate of title demonstrating positive covenant and restriction as to user will be issued to the PCA. We request that this proposed amendment be forwarded to the LPP for their consideration prior to the meeting on Wednesday next week which we can address at the meeting as well.

The advice of the Project Leader-Water Management has been sought in relation to this request. As at the time of writing, no response has been received.

#### **RECOMMENDATION:**

The requested change to Condition No.36 is acceptable. The condition has three reasons, which relate to identifying encumbrances, maintenance and controlling any change to the existing approved system. The creation of the restrictions or covenants prior to a final OC would not jeopardise the maintenance or ongoing management of the approved Stormwater Treatment Measure. The condition also adequately identifies the purpose and nature of the encumbrances. The recommended condition would read as follows:

#### **36. 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.*

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**Nic England**  
Planner  
Planning and Place