



11 January 2015

Mr Malcolm Ryan
The General Manager
Warringah Council
Civic Drive
725 Pittwater Road
DEE WHY NSW 2099

Dear Mr Ryan

Section 96(1A) Application – Amend various conditions of DA2015/0612

Further to our discussions, this letter comprises a formal request to Warringah Council under Section 96(1A) of the *Environmental Planning and Assessment Act 1979* to modify DA2015/0612 to allow initial works approved under the Application to commence prior to the resolution of the design of the permanent stormwater diversion and ensure that bonds align with the sequencing of the Works. The overall intent of the Application is to ensure that conditions are satisfied at appropriate times in the construction sequencing.

DA2015/0612 for drainage and stormwater management works and installation of shoring walls and bulk excavation was approved on 22 December 2015.

Proposed Modification

The approved works will be completed in the following sequence, however the consent currently restricts the commencement of any works on site until we provide further modelling to review the size of the permanent stormwater drainage pipe under condition 8 and 13 (which is contrary to previous agreements and subject of ongoing discussions). As demonstrated in the Table it is also illogical to hold up commencement of the works for the detailed design of the permanent drainage line. As demolition has commenced, it is imperative that the approvals now facilitate continuing work to avoid protracted construction and associated impact on the Town Centre, its occupants/users and the surrounding road network.

Table 1 – Contraction Sequencing of Approved Works

Sequence	Works
1	Installation of shoring walls
2	Installation and connection of temporary drainage line (attached to shoring walls)
3	Bulk excavation
4	Installation of permanent drainage line

To achieve the intended purpose of the Application, we propose amendments to conditions 7, 8, 12 and 13 as shown in **Annexure A** to this statement (deleted text shown in ~~strikethrough~~, new text shown in **bold**). A more detailed explanation of the changes is provided below and we note that we still require further review of the need for additional flood modelling which we will discuss separate to this Application. Notwithstanding, this application will allow us to commence works on site while this matter is further considered:

Condition 7 is amended to align the timing and delivery of relevant bonds with appropriate stages in the development process and ensure there is clarity around the return of the respective bonds. The Bonds are currently excessive for the permanent stormwater diversions works and need to be revised against the final design. As this matter is subject to further investigation, the Bond for the permanent stormwater works is proposed to be aligned with the relevant approval. All other Bonds will be paid in accordance with the approved conditions. Some minor adjustments have been made to clarify when the Bonds will be submitted and returned.

Condition 8 is amended to align approval of the permanent stormwater works to the commencement of the permanent drainage works, rather than hold up the entire development. As outlined in the construction sequencing, the design and ultimate size of the pipe will have no bearing on the initial phases of the works and therefore the consent in its current form unreasonably restricts the commencement of the approved works.

Condition 12 is amended to split the two issues addressed under the condition being shoring on other land and temporary anchoring. The timing for the shoring matters have been retained as prior to any construction certificate as shoring is the first action required to facilitate the approved works under the consent.

However, given that anchoring approvals and negotiations can take some time and are not necessary for shoring, temporary drainage or the initial bulk excavation (and it is possible that an alternative method such as back-propping may be adopted), we have proposed to align the need for this condition to be satisfied to prior to the commencement of any anchoring. This will ensure that all necessary approvals are in place prior to the relevant works commencing.

Condition 13 (like conditions 8), is amended to align approval of the permanent stormwater works to the commencement of the permanent drainage works, rather than hold up the entire development.

Assessment

The development will remain substantially the same as the original approval and can be considered under Section 96(1A) of the *Environmental Planning and Assessment Act 1979*. The development is not altered in any physical way as a result of the proposal and no additional environmental impact over and above that considered in the original assessment would be generated by the proposed modification. It effectively only makes adjustments to timing to allow works to commence that are not subject of and affected by issues that require further consideration (i.e. detailed design of the permanent water diversion and rock anchoring). Accordingly, the proposed changes allow for the more effective and efficient development of the land and does not change the physical nature of the approved works.

The proposed modification does not alter the permissibility of the proposal, nor does it impact on the compliance of the approved development with the relevant controls of the Warringah LEP or DCP. More broadly, the original assessment under S79C of the EPAA does not change as the resultant works and associated impacts do not change.

The proposed modification is considered to be in the public interest as it will allow for the more effective and efficient development of the land and does not change the physical nature of the approved works.

If you require further information please do not hesitate to contact me on ph. (02) 9287 2629. We look forward to receiving a positive determination in due course.

Yours faithfully

KARIMBLA CONSTRUCTION SERVICES (NSW) PTY LTD



Walter Gordon

Director Planning and Development

Annexure A – Proposed Amendments to Conditions

DA2015/0612 – Dee Why Town Centre

Proposed Amendments to Conditions to allow

7. Bonds

(a) Construction, Excavation and Associated Works Bond (Drainage Rediversion works) A Bond of \$1000000 as security against any damage or failure to complete the construction of the re diverted Council stormwater drainage line in Pittwater Road and Howard Avenue as required as part of this consent. The value may be adjusted based on the final construction drawings with reasonable evidence (i.e. contractor quotes and/or QS report) and must be submitted to Council prior the issue of a Construction Certificate or s138 Application for the permanent diverted Council stormwater drainage line. This bond may be refunded and replaced by the Maintenance Bond under Condition 7(d) upon submission to Council of the final Compliance Certificate for the re diverted Stormwater Drainage Works.

Comment [ML1]: We understand this is based on 1200mm pipe based on verbal advice from Council. We only received approval for a 750mm pipe and therefore this bond is excessive. As this is under review, we have deferred the issue of the bond until prior to the commencement of these works. Allowance has been made for the Bond to be amended based on the final approved design of the permanent drainage works.

Comment [ML2]: Proposed clarification around timing of construction and respective maintenance bond.

(b) Construction, Excavation and Associated Works Bond (Pollution). A Bond of \$50000 as security to ensure that there is no transmission of material, soil etc off the site and onto the public road and/or drainage systems. This will be required to be submitted prior to the Construction Certificate and returned to the Developer within 5 working days of an Occupation Certificate being issued.

Comment [ML3]: Proposed clarification to return bonds to avoid unnecessary disagreements in the future.

(c) Construction, Excavation and Associated Works Bond (Councils Road reserve) A bond of \$300000 as security against damage to Council's road(s) fronting the site caused by the basement excavation works and the transport and disposal of materials and equipment to and from the site. This will be required to be submitted prior to the Construction Certificate and returned to the Developer within 5 working days of an Occupation Certificate being issued.

Comment [ML4]: Proposed clarification to return bonds to avoid unnecessary disagreements in the future.

(d) Construction, Excavation and Associated Works Bond (Maintenance for civil works) Upon submission to Council of the final Compliance Certificate for the re diverted Stormwater Drainage Works the developer/applicant must lodge with Council a Maintenance Bond of \$200000 (being 20% of the construction bond and may be amended if the Construction Bond is amended in accordance with Condition 7(a)) for the construction of the re diverted Council Stormwater Drainage Line. The Maintenance Bond will only be refunded on completion of the 12 Month Maintenance Period, if work has been completed in accordance with the approved plans to the satisfaction of Council. (Note: This bond may be refunded and replaced by the Maintenance Bond upon submission to Council of the final Compliance Certificate for the re diverted Stormwater Drainage Works)

Comment [ML5]: Proposed clarification around timing of construction and respective maintenance bond.

Comment [ML6]: Allowance for maintenance bond to be amended to align with final Construction Bond amount.

Comment [ML7]: This should relate to Condition 7(a). Alternative amendments made for clarification.

(g) Construction, Excavation and Associated Works Bond (Councils Stormwater Box Culvert) A bond of \$300000 as security against damage to Council's Stormwater Box Culvert adjoining the eastern boundary of the site caused by the basement excavation works. This Bond must be submitted to Council prior the issue of a Construction Certificate or s138 Application for the permanent diverted Council stormwater drainage line. This bond may be refunded and replaced by the Maintenance Bond under Condition 7(d) upon submission to Council of the final Compliance Certificate for the re diverted Stormwater Drainage Works.

Comment [ML8]: Amended timing for lodgement. We believe this is doubling up on the bond already required under Condition 7(a). This is subject to further discussions with Council once the detailed design is finalised.

All bonds and fees shall be deposited with Council prior to the issue of the Construction Certificate ~~or other relevant approvals outlined above.~~ Details demonstrating payment are to be submitted to the Certifying ~~or relevant approval Authority~~ prior to the issue of the ~~Construction Certificate~~ relevant approvals.

Comment [ML9]: Consistency with above.

8. Application for stormwater diversion works to be approved within Councils Roadway

An application under the provisions of Sections 138 and 139 of the Roads Act 1993 ~~prior to the issue of the construction certificate for the basement excavation works is to must be approved prior to the commencement of works for the permanent stormwater diversion submitted to Council for approval.~~ The submission is to include four (4) copies of Civil Engineering plans for the design and construction of the Council rediverted storm water drainage line and associated footpath ,road shoulder and kerb & gutter works generally in accordance with the Concept Storm water Diversion Plan prepared by Storm Consulting civil design (Drawing nos 1793 P02, P03 P04 and LO5) approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy.

Comment [ML10]: It was agreed that we could commence temporary diversions and basement excavation prior to the permanent diversion. This needs to be amended so that the permanent diversion works cannot commence until the relevant S138 Approval is granted. This will allow initial phases of approved works to commence.

The Fee Associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. The developer/applicant must lodge with Council a security bond against any damage or failure to complete the above works as part of this consent is required in accordance with Condition 7. ~~(NOTE: This bond may be refunded and replaced by the Maintenance Bond upon submission to Council of the final Compliance Certificate.) The security bond is to be in the sum of \$1000,000. The developer/applicant must also lodge with Council a Maintenance Bond for the above works in Pittwater Road and Howard Avenue.. The Maintenance Bond will only be refunded on completion of the Maintenance Period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond will be equivalent to 20% of the above security bond.~~

~~All bonds and fees shall be deposited with Council prior to the issue of the Construction Certificate for the Council Stormwater Drainage rediversion works and excavation, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.~~

Comment [ML11]: All addressed under Condition 7. This avoids overlapping and any inconsistencies.

The design must be in accordance with the following requirements:

(a) Prepared and submitted on 4 A1 size sheets, undertaken by a consulting Civil Engineer with NPER3 qualifications. The design is also to be certified by designer in accordance with Councils Auspec One Design Specification. A traffic management plan is to be submitted by a suitably qualified traffic engineer to support the application.

(b) Approved and stamped by Council prior to the ~~issue of the Construction Certificate for basement excavation works~~ commencement of the permanent Stormwater Drainage rediversion works.

Comment [ML12]: Align requirements with relevant works/sequencing.

(c) Upon completion of the works, the applicant is to provide to Council of copies of "work as executed plans". The plans are to show relevant dimensions and finished levels and are to be certified by a surveyor. Also the applicant is to provide to Warringah Council in an approved format details of all public infrastructure created as part of the works (Reference is made to Council's website for approved format details)

(d) All Civil Engineering works including drainage re diversion and roadworks in Pittwater Road and Howard Avenue are to be fully supervised by the consultant responsible for their design, and on completion a compliance certificate is to be provided to Council certifying the approved plans, any relevant conditions of the consent and the section 138 Roads Act approval and Council's standard specification for engineering work - Auspec 1 has been complied with. A maintenance period of twelve (12) months shall apply to the work, after it has been completed and approved. In that period the applicant shall be liable for any part of the work which fails to perform in the manner outlined in Council's specifications, or as would reasonably be expected under the design conditions.

(e) A DRAINS Hydrological and Hydraulics Model is to be prepared to support the Engineering Plans. The model is to analyse the upstream catchment/ sub catchment to Council's existing stormwater drainage line running through the site. The re diverted drainage line is to be designed for a 1 in 10 year Average Recurrence Interval, which may require a larger pipe diameter than detailed in the concept design prepared by Storm Consulting Drawing nos 1793 P02, P03 P04 and LO5. The design is to determine the Hydraulic Grade Line of the re diverted stormwater drainage line and also take into account the tail water level of the downstream Council Box Culvert.

Comment [ML13]: Subject to ongoing discussions/review.

Details demonstrating compliance with this condition are to be submitted to the Certifying Authority prior to the issue of the commencement of the permanent Stormwater Drainage redirection works ~~Construction Certificate for basement excavation works.~~

Comment [ML14]: Align requirements with relevant works.

12. Shoring of Adjoining Property

(a) Should the proposal require shoring to support an adjoining property or Council land outside of the development site, owner's consent for the encroachment onto the affected property ~~owner~~ shall be provided with engineering drawings to be prepared by a structural engineer.

Comment [ML15]: Slight adjustments to clarify condition

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a construction certificate for shoring works on any other affected property.

Comment [ML16]: Align requirements with relevant works. Note, we will not require shoring on other land but have kept the condition to make the application simple.

(a)(b) Council approval is required if temporary rock anchors are to be used within Council land and Road Reserves. A deed of license between Council and the applicant subject to Council's standard wording needs to be entered prior to commencing site excavation works. All costs associated with the

preparation of the deed of license (2 Copies) shall be borne by the applicant and a signing fee is payable in accordance with Councils Fees and Charges.

Please note that any temporary anchors proposed to be located under a Roads and Maritime Services(RMS) road needs the concurrence of RMS prior to Council signing the Deed of License.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to any anchoring being undertaken in association with the approved works.~~the issue of the Construction Certificate.~~

Comment [ML17]: Align requirements with relevant works.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land. (DACENCO5)

13. Application for Stormwater Drainage Works within the Pittwater Road Frontage.

An application for stormwater drainage approval under Section 68 of the Local Government Act 1993 is to be submitted with Council for the design and construction of the Council re diverted stormwater drainage line within the site frontage adjacent to the Pittwater Road as detailed in the Storm Consulting Plan (Drawing No 1793 P03). The Engineering Plans are to be prepared in accordance Councils specification for engineering works – AUS SPEC #1. The submission is to include four (4) copies of plans for the detailed design addressing the above requirements prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

A DRAINS Hydrological and Hydraulics Model is to be prepared to support the Engineering Plans. The model is to analyse the upstream catchment/ sub catchment to Councils existing stormwater drainage line running through the site. The re diverted drainage line is to be designed for a 1 in 10 year Average Recurrence Interval , which may require a larger pipe diameter as detailed in the concept design prepared by Storm Consulting Drawing nos 1793 P02, The design is to determine the Hydraulic Grade Line of the re diverted stormwater drainage line.

Comment [ML18]: Subject to ongoing discussions/review.

The fee associated with the assessment and approval of the Section 68 of the Local Government Act 1993 application is to be in accordance with Council's fees and charges. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate for Basement Excavation works~~the commencement of the permanent stormwater redirection works.~~

Reason: To ensure compliance with Council's specification for engineering works (DACENPC1)