

To: Rodney Piggott
Team Leader Development Assessment

From: John Essenstam
Development Assessment Officer

Date: 26 August 2009

Subject: 96(1) Modification to delete conditions 4,5,7,8 and 9 from
Development Consent DA 2008/0694

Link: DA 2008/0694–MOD2009/0213

Address: 14 Quinlan Parade MANLY VALE

Background

There is no OSD system required for the above development and the conditions listed below were incorrectly added to the development consent on the advice of Council engineers.

Modification of Application

Under Section 96(1) of the EPA Act, a consent containing an error or mis-description may be amended. Warringah DCP (Chapter 1 Notification and Exhibition) does not require the notification of a Section 96(1) modification as it is considered to be a minor change not affecting the development.

The conditions imposed were as follows:

4. Authorisation of Legal Documentation Required for On-site Stormwater Detention

The original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved drainage plan) and hydraulic engineer's certification must be included with the above submission. Additionally a copy of the Component/Compliance Certificate issued by Council or an Accredited Certifier in Civil Works stating that the works are in accordance with the approved plans shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: *To create encumbrances on the land.*

5. Creation of Positive Covenant and Restriction as to User

Where any conditions of this Consent require the creation of a positive covenant and/or restriction as to user, the original completed request forms, (Department of Lands standard forms 13PC and/or 13RPA), shall to 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" prior to issue of the Interim/Final Occupation Certificate.

Reason: *To identify encumbrances on land.*

7. Restriction as to User for On-site Stormwater Detention

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land prior to the issue of an Interim/Final Occupation Certificate. 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 lodgment with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such restriction.

Reason: *To ensure no modification to the on-site stormwater detention structure without Council's approval.*

8. On-Site Stormwater Detention Compliance Certification

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance/Component Certificate shall be issued by Council or an Accredited Certifier in Civil Works stating that the works are in accordance with the approved plans prior to the issue of an Interim/Final Occupation Certificate.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: *To ensure stormwater disposal is constructed to Council's satisfaction.*

9. Positive Covenant for On-site Stormwater Detention

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council prior to the issue of an Interim/Final Occupation Certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgment with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Reason: *To ensure ongoing maintenance of the on-site stormwater detention system.*

Conclusion

It is considered that the modification is minor in nature and an error caused by Council. It is consistent with the provisions of section 96(1) of the EPA Act 1979 and is therefore recommended for approval.

Recommendation

That approval to modify the original development consent No. DA 2008/0694 be granted to delete condition 4,5,7,8 and 9.

Recommended for approval by:

.....
John Essenstam
Development Assessment Officer

Determined under the delegated authority of:

.....
Rodney Piggott
Team Leader Development Assessment