



Ms Chloe Vandervord  
16 French Street  
MCMAHONS POINT NSW 2060

D303/20  
MR3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 303/20/3 - APPROVAL**

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**Development Consent Number:** 303/20

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**Land to which this applies:** 3 Mil Mil Street, McMahons Point  
Lot No.: 1, DP: 76714

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**Applicant:** Chloe Vandervord

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**Proposal:** Section 4.55 (1A) application to facilitate pump-put stormwater system

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Pursuant to Section 4.55 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **303/20** and registered in Council's records as Application No. **303/20/3** relating to the land described as **3 Mil Mil Street, McMahons Point**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **10 March 2021**, has been determined in the following manner:

**1. To amend Condition C10 of the consent so as to read as follows:**

**Stormwater Management and Disposal Design Plan - Construction Issue Detail**

- C10. Prior to issue of any Construction Certificate, a site drainage management plan must be prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:
- a) compliance with BCA drainage requirements, Councils Engineering Performance guide and current Australian Standards and guidelines, such as AS/NZ3500.3.2 1998, National Plumbing and Drainage Code,
  - b) stormwater runoff and subsoil drainage generated by the approved development must be conveyed in a controlled manner by gravity from the grated boundary pit to the kerb and gutter in Mil Mil Street,

- c) the stormwater drainage system shall be designed for an average recurrence interval (A.R.I) of 1 in 20 years,
- d) all redundant stormwater pipelines within the footpath area shall be removed and footpath and kerb shall be reinstated,
- e) pipelines within the footpath area shall be hot dipped galvanised steel hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres,
- f) the design and installation of the rainwater tank(s) must comply with BASIX and Sydney Water requirements. Overflow from the tank(s) shall be connected by gravity to the stormwater disposal system,
- g) any proposed fence/building structure is to be constructed so as not to impede the natural overland flow, and
- h) provision is to be made for the collection and disposal in an approved manner of any overland flow entering the subject property or concentrated as a result of the proposed works,
- i) surface inlet pits shall be located to catch surface flows and shall be provided at all pipe junctions, changes in pipe direction exceeding 45 degrees, prior to connection to the public drainage system and shall be of sufficient size to accept the flow,
- j) all sub-soil seepage drainage shall be discharged via a suitable silt arrester pit. Details of all plans certified as being adequate for their intended purpose and compliant with the provisions of AS3500.3.2 by an appropriately qualified and practising civil engineer shall be submitted with the application for a Construction Certificate,
- k) prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception,
- l) provide subsoil drainage to all necessary areas with pump out facilities as required.

site drainage management plan which complies with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Note: An application for a Street Opening Permit must be applied for and approved prior to connection to the kerb and gutter in Mil Mil Street.

(Reason: To ensure controlled stormwater management and disposal without nuisance)

**2. To add Condition C16 of the consent so as to read as follows:**

**Pump-Out System Design for Stormwater Disposal**

C16. The design of the pump-out system for stormwater disposal will be permitted for drainage of basement areas only, and must be designed in accordance with the following criteria: -

- a) the pump system shall consist of two pumps, connected in parallel, with each pump being capable of emptying the holding tank at the rate equal to the rate of inflow for the one-hour

duration storm. The holding tank shall be capable of holding one hour's runoff from a one-hour duration storm of the 1 in 20-year storm,

- b) the pump system shall be regularly maintained and serviced, every six (6) months, and
- c) any drainage disposal to the street gutter from a pump system, must have a stilling sump provided at the property line, connected to the street gutter by a suitable gravity line.

Engineering details demonstrating compliance with these criteria and certified by an appropriately qualified and practising civil engineer shall be provided to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To ensure adequate provision is made for the discharge of sub-surface stormwater from the excavated parts of the site)

**3. To add Condition G6 to read as follows:**

**Certification - Civil Works**

- G6. An appropriately qualified and practising Civil Engineer must certify to the Certifying Authority that the stormwater drainage system is constructed in accordance with this consent and the provisions of the applicable Australian Standard. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority) upon completion of the development works and prior to the issue of an Occupation Certificate.

(Reason: Compliance with the Consent)

**4. To add Condition G7 to read as follows:**

**Works As Executed Drawings**

- G7. A works-as-executed survey drawing (W.A.E.) of the completed stormwater drainage system must be obtained. The W.A.E. survey drawing must show the alignment, depth and grade of the stormwater drainage pipelines, pits and ancillary plumbing. The W.A.E survey drawing must be reviewed by a qualified and practising civil engineer and certification provided to the Certifying Authority that the as-built system achieves the design intent of the plans approved with the Construction Certificate. Certification must be provided with the W.A.E survey drawing to the Certifying Authority prior to the issue of an Occupation Certificate.

A copy of the WAE survey drawing, certification and CCTV inspection footage must be submitted to the Council if it is not the Certifying Authority.

(Reason: Compliance with the Consent)

**5. To add Condition G8 to read as follows:**

**Covenant and Restriction (Stormwater Control Systems)**

- G8. An Instrument pursuant to Sections 88B and 88E of the Conveyancing Act 1919 and one copy must be submitted to Council in registrable form, providing for:

- a) a restriction as to user and positive covenant as to user as appropriate in favour of North Sydney Council burdening 3 Mil Mil Street, requiring the ongoing retention, maintenance and operation of the stormwater facility (pump-out system),
- b) North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument,
- c) the wording on the Instrument making reference to the Council file/s which hold;
  - the Construction plans, and
  - the “Work-as-Executed” (as built) plans.

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council’s official seal will be affixed to these documents, prior to submission to the NSW Land Registry Services for registration.

The Instrument creating the restriction and/or covenant under ss 88B and 88E required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier.

Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of an Occupation Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: Compliance and adequate maintenance of drainage system)

**6. To add Condition G9 to read as follows:**

**Pump-Out Maintenance**

- G9. Prior to issue of an Occupation Certificate a Maintenance Regime must be prepared for the stormwater pump-out system and submitted to the Principal Certifying Authority for approval with the Occupation Certificate documentation. The regime must specify that the system is to be regularly inspected and checked by qualified practitioners.

The stormwater pump-out system must be maintained in accordance with the approved Maintenance Regime at all times.

(Reason: To ensure future provision for maintenance of the drainage system)

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**Reasons for Approval:**

The proposal (as modified) involves reinstatement and endorsement of a pump-out stormwater system. The proposed modification will result in development that is substantially and materially the same as approved by DA303/20 (as demonstrated in the above considerations under Clause 4.55 of the Environmental Planning and Assessment Act 1979).

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The merits of the proposed modification and an assessment of this modification against relevant provisions and controls under environmental planning instruments (including the NSLEP 2013) have been described and detailed throughout this report. In summary, the proposed modification is considered acceptable and supportable, satisfying the above requirements and the provisions under Section 4.55 of the Environmental Planning and Assessment Act 1979.

Accordingly, it is recommended that the following conditions are amended in the consent:

- Amend Condition C10 to reflect modified stormwater system.
- Add Condition C16 to reflect modified stormwater system.
- Add Condition G6 to reflect modified stormwater system.
- Add Condition G7 to reflect modified stormwater system.
- Add Condition G8 to reflect modified stormwater system.
- Add Condition G9 to reflect modified stormwater system.

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**How community views were taken into account:**

The proposal as modified is considered to be in the public interest for the reasons stated throughout this report.

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The conditions attached to the original consent for Development Application No. **303/20** by endorsed date of **10 March 2021** still apply.

**ADVISINGS**

- (a) Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact **Mr Miguel Rivera**. However, if you wish to pursue your rights of appeal in the Land and Environmental Court pursuant to Section 8.7 of *the Environmental Planning and Assessment Act 1979* (as amended), you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, instead of a full Court hearing, subject to any further advice to the contrary from Council's Solicitors and senior staff. Such an approach is less adversarial, it achieves a quicker decision than would be the case through a Court hearing and it can give rise to considerable cost and time savings for all parties involved.
- (b) Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.
- (c) Prior to commencing any building, subdivision or associated constructions works, the following provisions of *the Environmental Planning and Assessment Act 1979* (the 'Act') are to be complied with:
- (i) A Construction Certificate is to be obtained in accordance with Section 6.3 of the Act.
  - (ii) A Principal Certifier is to be appointed and Council is to be notified of the appointment in accordance with Section 6.6 of the Act.
  - (iii) Council is to be notified at least two (2) days of the intention to commence building works, in accordance with Section 6.6(2)(a) of the Act.

- (d) You are advised that changes to the external configuration of the building, changes to the site layout, density and unit configuration internal changes to the proposed building or any changes to the proposed operation of a use **MAY** require the submission of a further modification under Section 4.55 of *the Environmental Planning and Assessment Act, 1979* (as amended).

Council staff would be pleased to assist in identifying such changes which may require the submission of a modification of a Development Application under Section 4.55 of *the Environmental Planning and Assessment Act*.

**Endorsed for and on behalf of North Sydney Council**

**27 March 2023**

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DATE



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Signature on behalf of consent authority  
MIGUEL RIVERA  
**SENIOR ASSESSMENT OFFICER**