

Development Consent No. 392/17

Section 4.55 Application

Applicant's Name

Platino Properties Pty Ltd

Land to which this applies

6 The Boulevarde, Cammeray
Lot No.: 7, DP: 24336

Proposal

To modify a Development Consent DA392/17 to amend Deferred Commencement Conditions 1. Stormwater Easement Condition and 2. Stormwater Covenant and Restriction Condition

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. **392/17** and registered in Council's records as Application No. **392/17/2** relating to the land described as **6 The Boulevarde, Cammeray**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 10 August 2018, has been determined in the following manner:

1. *To delete Deferred Commencement Condition (Stormwater Easement Condition)*
2. *To delete Deferred Commencement Condition (Stormwater Covenant and Restriction Condition)*
3. *Impose the following new conditions G10 and G11:*

Stormwater Easement Condition

G10. **Prior to the issue of any Occupation Certificate**, an instrument is to be prepared pursuant to Section 88A of the Conveyancing Act 1919, and one copy must be submitted to Council in registrable form, providing for:

- (a) A drainage easement in favour of Council, 1.50m wide and located along the eastern boundary of the site.
- (b) The easement shall be at no cost to Council;

- (c) Access rights for Council personnel and equipment to inspect and maintain and/or replace stormwater infrastructure;
- (d) Council being nominated in the instrument as the only party authorised to release, vary or modify the Instrument.

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 Land & Property Information Office for registration.

The instrument creating the easement required by this condition of consent must be registered on the Title of the development site.

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

Stormwater Covenant and Restriction Condition

G11. **Prior to the issue of any Occupation Certificate**, an instrument is to be prepared pursuant to Sections 88B and 88E of the Conveyancing Act 1919, and one copy must be submitted to Council in registrable form. The instrument is to provide for a Restriction As to User and Positive Covenant in favour of Council and burdening the site to ensure the on-going maintenance and operation of the stormwater system that collects and disposes, by pumping, of stormwater coming into the site from the public land to the south of the site.

The Restriction As to User and Positive Covenant shall refer to the Stormwater System described in the stormwater plans prepared by ING Consulting Engineers, drawings 07110-01 to 07110-05, Issue E except as amended below in the conditions of this consent.

Council is to be nominated in the instrument as the only party authorised to release, vary or modify the instrument.

The instrument is to make reference to the Council file/s which hold:

- (a) the Construction plans; and
- (b) the 'Work-as-Executed' (as built) plans.

The Instrument shall include the following wording except where agreed with Council:

The registered proprietor(s) of the lot(s) hereby burdened will in respect of the Stormwater System:

- (a) keep the system clean and free from silt, rubbish and debris;

- (b) maintain and repair at the sole expense of the registered proprietor(s) the whole of the Stormwater System so that it functions in a safe and efficient manner, and disposes of stormwater to the Council's stormwater pit within the Boulevard roadway;
 - (c) permit the Council or its authorised agents from time to time and upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land for compliance with the requirements of this covenant;
 - (d) comply with the terms of any written notice issued by the Council in respect of the requirements of this covenant within the time stated in the notice.
2. Pursuant to Section 88F(3) of the *Conveyancing Act 1919* the Council shall have the following additional powers.
- (a) in the event that the registered proprietor fails to comply with the terms of any written notice issued by the Council as set out above the Council or its authorised agents may enter the land with all necessary materials and equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in part 1(d) above.
 - (b) the Council may recover from the registered proprietor in a Court of competent jurisdiction:
 - (i) any expense reasonably incurred by it in exercising its powers under sub-paragraph (a) hereof. Such expense shall include reasonable wages for the Council's employees engaged in effecting the work referred to in (a) above, supervising and administering the said work together with costs, reasonably estimated by the Council, for the use of materials, machinery, tools and equipment in conjunction with the said work;
 - (ii) legal costs on an indemnity basis for issue of the said notices and recovery of the said costs and expenses together with the costs and expenses of registration of a covenant charge pursuant to section 88F of the Act or providing any certificate required pursuant to section 88G of the Act or obtaining any injunction pursuant to section 88H of the Act.

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 Land & Property Information Office for registration.

The Instrument creating the Restriction As to User and Positive Covenant required by this condition of consent must be registered on the Title of the development site. Evidence of this registration is to be provided to Council.

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: To ensure future provision for maintenance and operation of the stormwater system)

Reason for approval

The s.4.55 application has been assessed against all applicable environmental planning instruments and Council policies and was found to be generally satisfactory, including in relation to the North Sydney LEP 2013 and North Sydney DCP 2013, subject to conditions of consent.

Having regard to the provisions of Section 4.15 of the EP&A Act 1979, the application is considered to be satisfactory as detailed in the assessment report.

How were community views taken into account in making the decision

The proposal was not required to be notified and advertised in accordance with Part A, Section 4 *Notification of Applications* of North Sydney DCP 2013 and no submissions were received.

The conditions attached to the original consent for Development Application No. 392/17 by endorsed date of 10 August 2018 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **the undersigned**. 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. The use of the Section 34 Conference approach requires the appellant to agree, in advance and in writing, that the Court appointed assessor will be given the full authority to completely determine the matter at the conference.
- (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 Certifying Authority 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 & 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 & Assessment Act.

DATE

Signature on behalf of consent authority
LARA HUCKSTEPP
EXECUTIVE PLANNER