

3.1 Lot 1092 Brooker Avenue, Beacon Hill – Modification to Existing Deferred Commencement Consent Condition No 1(a) to Include a Reference to a Part 5 Assessment

S96(1A) APPLICATION TO MODIFY A DEVELOPMENT CONSENT ASSESSMENT REPORT

Assessment Officer: Nick England
Address / Property Description: Lot 1092 DP 752038 Brooker Avenue, BEACON HILL

Proposal: Modification to existing Deferred Commencement (DA2005/0586) Condition No.1(a) to include a reference to a Part 5 Assessment.
Development Application No: MOD2008/0298
Plans Reference: N/A
Applicant: Vigor Master Pty Ltd
Owner: Jian Zhong Liu
Application Lodged: 15 October 2008
Amended Plans: N/A

Locality: B2 Oxford Falls
Category: Category 2 (agriculture)
Clause 20 Variations: Not applicable to this development
Land and Environment Court Action: NO
Referred to IHAP: NO
Referred to ADP: YES

SUMMARY

Submissions: 24/10/2008 to 10/11/2008 (Notification Period) - 12
Outside Notification Period(s) - Nil
Submission Issues: Environmental impact of proposed road; Road safety;
Potential for development in Red Hill; Lack of proposal
detail; appropriateness of condition; Aboriginal heritage
Assessment Issues: SEPP Infrastructure; Development on road reserves
Recommendation: Section 96 Approval
Attachments: Pre-lodgement notes 10 January 2008

LOCALITY PLAN (not to scale)



Subject Site: Lot 1092 DP 752038 Brooker Avenue, BEACON HILL

Notified Residences: Under the provisions of the applicable Development Control Plan the subject application has been notified to the adjoining property owners and occupiers. As such, there were **51** notification letters sent.

SITE DESCRIPTION

The subject site is described as Lot 1092 in DP 752038, Brooker Avenue, Beacon Hill. The site has a total area of 2.7 hectares and is located adjacent an undeveloped Council road reserve.

The entire land is currently undeveloped and vegetated with remnant Coastal Sandstone Heath. At present, the site does not have formal vehicular access. A partially unformed road reserve currently runs from the northern end of Brooker Avenue (see Photograph 1) towards the north, in between Lots 1092 and 1093 and the rear of Nos. 9, 10 and 11A Guardian Parade.

At the point where the road reserve abuts the Guardian Parade properties, a fire trail is located on this reserve (see Photograph 2).

The surrounding land uses are characterised by detached style residential dwellings. Red Hill Reserve, which is classified as Public Open Space under Warringah Local Environmental Plan 2000, is located to the east and north-east of the site.



Photograph 1: The southern junction of the Brooker Avenue road reserve, with a partially completed road access. This access way continues off the road reserve and through Council reserve to junction with Guardian Avenue.



Photograph 2: Fire trail access located to the west of Guardian Parade properties.

RELEVANT BACKGROUND

The consent subject to the proposed modification, being DA2005/0586 (Deferred Commencement) for "Construction of an aquaculture facility consisting of four (4) fish ponds, rainwater tank, access driveway and associated structures" was approved on 10 December 2007.

The conditions of deferred commencement required that further development consent be sought for the construction of the road access to the approved development. This was applied as the site was subject to the unusual circumstance where whilst it could be accessed from a road reserve, no formal road access to the allotment existed.

A pre-lodgement meeting was held with the applicant on 10 January 2008, to determine Council's requirements for the development application. However, it was subsequently determined that the construction of a road on a road reserve did not in all circumstances require development consent, where the works were being undertaken on by or on behalf of the relevant authority (in this case, Council). This is consistent with the provisions of SEPP Infrastructure (Clause 94(1)), which defines such works as being permitted without consent.

Any party other than Council seeking to construct a road on a Council road reserve would need to agree to construct the road on Council's behalf. In this regard it was suggested in the pre-lodgement notes to the applicant that they enter into an arrangement with Council to provide a road access, subject to the specific technical and environmental requirements of Council. These would then be established within a legal agreement between the applicant and Council.

However, the wording of the existing Deferred Commencement condition No.1(a) presents a procedural difficulty in that it effectively requires the applicant to submit a development application for development that does not require consent development. Therefore the applicant was advised that before the matter of the vehicular access be satisfied and the consent become operative, Deferred Commencement condition No.1 would need to be modified to reflect correct procedural matter. The reference to a Part 5 Assessment however still requires proper consideration of the potential impact of any proposed road.

To satisfy the requirements of the deferred commencement consent, the applicant has provided information and undertaken tasks requested by Council, which were first received on 2 April 2008. This included:

- transfer of Crown Road reserve to Council;
- preparation of environmental studies;
- provision of engineering details; and
- initiation of draft Deed of Agreement to undertake works for Council.

The land has subsequently been transferred by the Crown to Council, which was confirmed in the Government Gazette of 4 July 2008. As such, Council is now the relevant authority for the road. However, the departments within Council responsible for assets / road construction are yet to permit the applicant to undertake these works, subject to the detail of the proposed road being finalised.

Condition No.2(a) and (b) of the Deferred Commencement consent required that a relevant form of consent be granted with 365 days of the Deferred Commencement consent, dated 10 December 2007. However the administrative requirements of seeking approval for the road access has meant that the 1 year originally provided is no longer adequate. A previous modification application (MOD2008/0341) to the Deferred Commencement consent was approved on 8 December 2008, which extended the period to 2 years, lapsing on 10 December 2009.

PROPOSAL IN DETAIL

The proposed modification to the existing consent consists of the amendment of Deferred Commencement consent no.1(a), which currently reads:

1. *This Deferred Commencement Consent is granted under Section 80(3) of the Environmental Planning and Assessment Act, 1979 and shall not operate until evidence is produced which satisfies Council as to the following matters and such satisfaction is notified in writing by Council:*
 - a) *The granting of Consent by Council for a separate Development Application for the construction of an appropriate access road that connects Lot 1092 in DP 752038 with a public road.*

The proposed modification as requested by the applicant would modify 1(a) to read:

1. *This Deferred Commencement Consent is granted under Section 80(3) of the Environmental Planning and Assessment Act, 1979 and shall not operate until evidence is produced which satisfies Council as to the following matters and such satisfaction is notified in writing by Council:*
 - a) *The granting of Consent by Council for a separate Development Application or a Part 5 Assessment for the construction of an appropriate access road that connects Lot 1092 in DP 752038 with a public road.*

Subsequent assessment of the proposed modification has determined that it would be more appropriate to amend the wording to read:

1. *This Deferred Commencement Consent is granted under Section 80(3) of the Environmental Planning and Assessment Act, 1979 and shall not operate until evidence is produced which satisfies Council as to the following matters and such satisfaction is notified in writing by Council:*
 - a) *The granting of Consent by Council for a separate Development Application or the undertaking of an assessment under Part 5 of the Environmental Planning & Assessment Act 1979 for the construction of an appropriate access road that permits access from Lot 1092 in DP 752038 with a public road.*

The recommended re-wording of the amended condition is still consistent with the original request for modification.

CONSIDERATION UNDER S96(1A) OF THE EPA ACT 1979

The subject application has been lodged pursuant to Section 96(1A) of the Environmental Planning and Assessment Act 1979. Section 96(1A) of the Environmental Planning and Assessment Act 1979 stipulates:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) *it is satisfied that the proposed modification is of minimal environmental impact*

Comment: The proposed modification relates to a procedural matter, in this regard as to how the assessment of the proposed road access is to be undertaken. The modification does not relate in any way to the physical nature of the works and use as originally approved.

The matters raised in the original condition No.1(a) will still need to be satisfied prior to the consent being made operational, which includes any relevant environmental or road safety issues. If Council considers a proposed vehicular access on the subject road reserve, as development without consent, Section 111 (Part 5) of the Environmental Planning &

Assessment Act 1979 has the effect of requiring the “determining authority” (in this case, Council) to consider any relevant environmental impact.

In this regard, the proposed modification will not dispense of Council’s responsibility to consider any potential environmental impact. Therefore, the modification will have a negligible environmental impact as it does not in propose physical works and will not hinder the environmental assessment of any proposed vehicular access.

- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comment: As stated previously, the modification does not relate in any way to the physical nature of the works and use as originally approved. The proposed modification is to amend a Deferred Commencement condition, which once satisfied, will be deleted from the consent once it becomes operative. With the proposed modification, the proposal will remain substantially the same development as that originally approved.

- (c) *it has notified the application in accordance with:*
- (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

The application was notified by letter dated 23 October 2008 to 51 properties. A total of twelve (12) submissions were received, as outlined in the following table.

Submission Received	Address
G Savage	75 Brooker Avenue, BEACON HILL
C Savage	75 Brooker Avenue, BEACON HILL
G Morris	71 Brooker Avenue, BEACON HILL
G Vorobieff	PO Box 6096 FRENCHS FOREST
H Jakobi	11 Guardian Parade, BEACON HILL
R J Pearce	2A Guardian Parade, BEACON HILL
D Vorobieff	63 Brooker Avenue, BEACON HILL
C Bayer & D Srgo	37 Brooker Avenue, BEACON HILL
L Barin	10 Guardian Parade, BEACON HILL
S & S Grillo	35 Brooker Avenue, BEACON HILL
A Sharp	77 Brighton Street, CURL CURL
D & C Pennock	15 Guardian Parade, BEACON HILL

The issues raised in the submissions are summarised and addressed below:

1. *The proposed vehicular access will have an adverse impact on the physical and natural environment.*

Comment: The scope of the modification does not extend to the provision of any specific details of a vehicular access, but rather relates to the manner in which the access will be assessed. As such, the potential impact of the proposed access cannot be determined in the subject modification and would instead be a consideration for any subsequent development application or Part 5 assessment.



- The proposed vehicular access will have an adverse impact on road safety through increase in heavy vehicles, loss of neighbourhood amenity and impediments to pedestrian access.*

Comment: As stated previously, the scope of the modification does not extend to the provision of any specific details of a vehicular access, but rather relates to the manner in which the access will be assessed.

In any event, the finalisation of a road access on the road reserve would need to be designed to satisfy the applicable road design and safety requirements. Any proposed vehicular access could not impede any existing or future pedestrian access the public is entitled as of right, to access the road reserve.

- Approval of the modification will permit access to the bushland in Red Hill for future development.*

Comment: As stated previously, the scope of the modification does not extend to the provision of any specific details of a vehicular access, but rather relates to the manner in which a vehicular access road would be assessed. The Deferred Commencement consent (as proposed to be modified) clearly states that access is only to be provided to the subject allotment (being Lot 1092 DP 752038 on Brooker Avenue).

The development of any adjoining allotments would require further development consent and the construction of a vehicular access on any adjoining road reserve would not be a determinant for whether or not such development is appropriate.

- No details are provided in the modification of the proposed vehicular access.*

Comment: As stated previously, the scope of the modification does not extend to the provision of any specific details of a vehicular access, but rather relates to the manner in which a vehicular access road would be assessed. Therefore no details of a proposed vehicular access were provided, or indeed required for the application to modify the consent.

- The proposed modification to Deferred Commencement condition No. 1(a) would substantially change the intention of the original condition and the circumstances have not changed to warrant the modification. A development application is required for the road.*

Comment: As outlined in the Background section of this report, the subject application was approved on 10 December 2007. At the time of consent, the existing State legislation and Council policy would have required the applicant to lodge a development application to construct a vehicular access on the road reserve.

On January 1 2008, SEPP Infrastructure was enacted, which permits construction of roads without development consent. If acting on the behalf of Council, the applicant could undertake this activity without development consent. To act on Council's behalf, the applicant would need to enter into a form of agreement to undertake the works.

Therefore the circumstances have changed and the modification is warranted as it reflects the correct procedural nature of erecting a road on a road reserve.

- The modification should not be determined until adjacent residents have been notified and consulted of the details of the proposed road.*

Comment: The proposed modification will not delete the ability for a development application to be lodged and if this option is pursued by the applicant, then the application will be notified in accordance with the provisions of the Warringah Development Control Plan.

7. *The modification is a deceptive way of securing road access for future residential development.*

Comment: As stated previously, the scope of the modification does not extend to the provision of any specific details of a vehicular access, but rather relates to the manner in which a vehicular access road would be assessed.

However, it should be noted that the construction of any vehicular access on the road reserve is not inconsistent with the purpose of this land, which is to permit the construction of access to all the allotments which abut the Brooker Avenue road reserve. Access to the road reserve is enjoyed as a right by the owners of these allotments, irrespective of the type of development located on the allotments.

8. *The Deed of Agreement in the pre-lodgement notes of 10 January 2008 is objected to as it would permit a road that is contrary to the public interest. There is no imposition for Council to permit the construction of a private driveway on a road reserve and the Deed of Agreement would oblige Council to permit an access.*

Comment: Whether an access is public or private, the erection of a vehicular access on a road reserve is permitted with the relevant consent of the applicable authority. Be it via a development application, works undertaken on behalf of Council or an application under section 138 of the Roads Act, a vehicular access can be constructed on the road reserve. It should be noted that Council generally retains the discretion in regard to the type of vehicular access, however must also preserve the right of access that allotment owners enjoy. This is the ultimate purpose of road reserves of which it is Council's responsibility to facilitate access to.

9. *The land within the road reserve has been inspected by Aboriginal elders from the mid-north coast of NSW and they consider it to be land of high spiritual significance.*

Comment: The original application included a detailed investigation on potential Aboriginal heritage (which included the land subject to the future road access), which was referred to the Metropolitan Local Aboriginal Land Council (MLALC) for their comment. MLALC concluded that no Aboriginal sites were likely to be affected. Council takes the assessment of the MLALC in good faith and they are the body nominated by Council as the referral body for matters of Aboriginal heritage.

Further, Council is not in the possession of any information that would necessitate the re-consideration of the proposal on Aboriginal heritage grounds and is not compelled to seek the advice of any other group than the MLALC.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

Section 96(5) requires consideration of relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979. These are provided below:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "WLEP 2000" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	Refer to discussions on Draft Environmental Planning Instruments in the body of the report.
Section 79C (1) (a)(iii) – Provisions of any development control plan	The modification was notified in accordance with Part 1 of the Warringah Development Control Plan.
Section 79C (1) (a)(iiia) - Provisions of any Planning Agreement or Draft Planning Agreement	None applicable.
Section 79C (1) (a)(iv) - Provisions of the regulations	Clause 7 of the EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. The existing conditions in the original consent will apply to the works proposed in the modification.

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	Considered under Section 96(1A)(a) above.
Section 79C (1) (c) – The suitability of the site for the development	Not applicable – considered under original approval.
Section 79C (1) (d) – Any submissions made in accordance with the EPA Act or EPA Regs	Considered under Section 96(1A)(c) & (d) above.
Section 79C (1) (e) – The public interest	Not applicable – considered under original approval.

State Environmental Planning Policies

There are no State policies that are relevant to the subject proposal.

STATUTORY CONTROLS

Warringah Local Environmental Plan 2000

Desired Future Character

The subject site is located in the B2 – Oxford Falls Locality under Warringah Local Environmental Plan 2000. The Desired Future Character Statement for this locality is as follows:

The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.

Future development will be limited to new houses conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

Development in the locality will not create siltation or pollution of Narrabeen Lagoon.

The proposed modification is to an existing consent for Category 2 (agriculture) development.

The modification relates to a procedural matter and does not relate to any physical aspect of the approved development. The modification is therefore substantially the same as the approved development, which in turn was found to be consistent with the Desired Future Character in the original assessment of the application.

The proposed modification is considered consistent with the DFC Statement.

Built Form Controls for Locality

The Built Form Controls are not applicable to this modification application, as no change to the physical aspects of the approved development are proposed.

Clause 20 Variation

Clause 20 Variations are not applicable to this modification application.

GENERAL PRINCIPLES OF DEVELOPMENT CONTROL

The General Principles of Development Control are not applicable to the proposed modification:

SCHEDULES

No schedules are applicable to the proposed modification.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

No draft environmental planning instruments are applicable.

REFERRALS

Legal Services

The proposed modification was referred to Council's Legal officer for comment. The subsequent advice provided was not inconsistent with the recommendation of this report.

CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section 96(1A) of the Environmental Planning and Assessment Act, 1979.

The proposed modification relates to a procedural matter, which has necessitated a modification to Deferred Commencement No.1(a) to reflect that road works do not simply require a development application since the inception of SEPP Infrastructure on 1 January 2008.

In the event that Council considers a proposed vehicular access on the subject road reserve as development without consent, Section 111 (Part 5) of the Environmental Planning & Assessment Act 1979 has the effect of requiring the "determining authority" (in this case, Council) to consider any relevant environmental impact.

In this regard, the proposed modification will not dispense of Council's responsibility to consider any potential environmental impact, at the time when the proposed vehicular access is presented to the relevant Council departments for detailed consideration.

In context of the procedural nature of the proposed modification, the proposal is considered to have no adverse environmental impact and the modification is considered substantially the same development as that approved in consent DA2005/0586.

It is considered that the proposed modification satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. Accordingly, the proposal is recommended for approval.

RECOMMENDATION (SECTION 96 APPROVAL)

That the Modification application No.MOD2008/0298 to Deferred Commencement consent No: 2006/0586 for Modification to existing Deferred Commencement (DA2005/0586) Condition No.1(a) to include a reference to a Part 5 Assessment at Lot 1092 DP 752038 Brooker Avenue, BEACON HILL be approved subject to the modification of Condition No.1(a) to read as follows:

1. This Deferred Commencement Consent is granted under Section 80(3) of the Environmental Planning and Assessment Act, 1979 and shall not operate until evidence is produced which satisfies Council as to the following matters and such satisfaction is notified in writing by Council:
 - a) The granting of Consent by Council for a separate Development Application or the undertaking of an assessment under Part 5 of the Environmental Planning & Assessment Act 1979 for the construction of an appropriate access road that permits access from Lot 1092 in DP 752038 with a public road.

Pre-Lodgement Notes 10 January 2008

<ul style="list-style-type: none"> • Attendees For Applicant Michael Wu Hogerth Jing 	<ul style="list-style-type: none"> • Attendees for Council Peter Robinson Robert Barbuto Philip Hoffman Stuart Withington Belinda Tricker Nick England
<ul style="list-style-type: none"> • Address of Proposal: Lot 1092 DP 752038 Brooker Avenue, Beacon Hill 	
<ul style="list-style-type: none"> • Description of proposal: Construction of road on existing vacant road reserve to access property at Lot 1092 DP 752038 Brooker Avenue, Beacon Hill 	
<ul style="list-style-type: none"> • Locality under Warringah Local Environmental Plan 2000: B2 Oxford Falls Valley 	
<ul style="list-style-type: none"> • Category Of Development: Exempt under Schedule 2 of WLEP 2000 as "road undertakings" (see Other Issues for further detail). 	
BUILT FORM CONTROLS	COMMENT
<ul style="list-style-type: none"> • HEIGHT/NUMBER OF STOREYS: 	Not applicable (N/A)
<ul style="list-style-type: none"> • BUILDING ENVELOPE (4M/45°) 	N/A
<ul style="list-style-type: none"> • SIDE BOUNDARY SETBACKS: 	N/A
<ul style="list-style-type: none"> • FRONT SETBACK (Min 6.5m), or build to lines in Dee Why. 	N/A
<ul style="list-style-type: none"> • REAR SETBACK (6M): 	N/A
<ul style="list-style-type: none"> • ANY OTHER SETBACKS IE TO LAKES/BEACH ETC 	N/A
<ul style="list-style-type: none"> • LANDSCAPED OPEN SPACE: 	N/A
<ul style="list-style-type: none"> • OTHER MATTERS: National Part Setback (any development adjacent to National Park are to have a 20m setback) 	The subject road reserve is not adjacent to any National Park.
<ul style="list-style-type: none"> • DESIRED FUTURE CHARACTER ISSUES: 	Vegetation where possible to be retained.

Note: No pre-application meeting can provide an authoritative statement as to the likely outcome of an application. A determination can only be made following the lodgement of an application and the completion of the assessment process.



Pre-Lodgement Notes 10 January 2008

GENERAL PRINCIPLES	COMMENTS
DIVISION 1 – GENERAL (GLARE; LOCAL RETAIL CENTRES; HOUSING FOR OLDER PEOPLE; BROTHELS; CONSTRUCTION SITES – CL 38-42)	Construction sites: standards conditions would apply
DIVISION 2 – HEALTH AND SAFETY (NOISE; POLLUTANTS; HAZARDS; RADIATION; FLOODING; CONTAMINATED LAND; REMEDIATION OF CONTAMINATED LAND – CL 43-49)	N/A
DIVISION 3 – PUBLIC DOMAIN (SAFETY FRONT FENCES, DEV NEAR PARKS; SIGNS – CL 50-53)	N/A
DIVISION 4 – SITE PLANNING/DESIGN (SERVICES; SITE CONSOLIDATION; UNIQUE FEATURES; SLOPING LAND; FLORA; KOALAS; WATERCOURSES; VIEWS; SUNLIGHT; LANDSCAPED OPEN SPACE; PRIVATE OPEN SPACE; PRIVACY; BULK ROOFS; CONSF OF ENERGY/WATER; ACCESSABILITY; SITE FACILITIES – CL 54-70)	Clause 54 – Provision and location of utility services: utility services are to be provided within a separate corridor aligned to the road. The applicant is to consult with all relevant utility authorities to determine their requirements prior to finalisation of the road design. Clause 58 – Protection of existing flora: adequate study required of impact on existing vegetation. Existing studies need to be updated.
DIVISION 5 – TRAFFIC ACCESS PARKING (PARKING FACILITIES; TRAFFIC ACCESS; LOADING; PARKING PROVISION; DESIGN – CL 71-75)	The proposed road is located in an existing road reserve. No objection is raised to the location of the road, subject to sufficient design detail being provided to demonstrate compliance with the applicable road design standard.
DIVISION 6 – SOIL/WATER MANAGEMENT (STORMWATER; LANDFILL; EROSION/SEDIMENTATION – CL 76-78)	Adequate details are to be provided of soil and water management during construction and post construction.
DIVISION 7 – HERITAGE (CL 79-83)	The assessment made by the Metropolitan Local Aboriginal Land Council in 2004 indicated that there was no evidence of indigenous relics on the subject land. An updated Aboriginal heritage impact assessment report will be required with any application.
Reminders – Site Analysis; NATHERS	N/A
OTHER ISSUES ARISING:	COMMENTS
1. Development Consent / Requirements of Deferred Commencement DA2005/0586.	1. The proposed works may be considered “road undertakings” as defined by Clause 7(b) and Schedule 2 of Warringah LEP 2000, therefore not requiring any development consent. However, a condition of deferred commencement issued by Council, which requires a development application for a road access, reflects the consent orders issued by the NSW Land and Environment Court (LEC) on 27 April 2005 (No.11087 of 2004).

Pre-Lodgement Notes 10 January 2008

<p>2. Transfer of Crown Land to Council</p> <p>3. Deed of Agreement</p> <p>4. Road Design Requirements</p>	<p>The table within Schedule 2 describing the exempt works, clearly states that “road undertakings” are “Public works”. Whilst no definition for public works exists within the WLEP 2000, it has to be assumed that they are such works as carried out on, or on behalf of, a public authority. If the proposal is to be carried out by a private party, the proposal would have to be carried out on behalf of Council.</p> <p>For the reasons outlined above, you are advised that development consent is not required for the works, but only if the applicant enters into an agreement with Council that it will undertake the works on its behalf and meet all associated costs involved in the undertaking.</p> <p>The applicant will therefore need to undertake the following as outlined below, with particular attention to Issues 2 and 3:</p> <p>2. Whilst Council has previously agreed to accept transfer of the Crown land subject to the road reserve, this has yet to be enacted. For the works to be undertaken on behalf of Council, the land will firstly need to be in the ownership of Council with the applicant to meet the cost of transfer of the Crown land. In this respect request will need to be made to Council’s Asset Management team to enact the transfer and payment of fee (\$1000 at time of writing).</p> <p>3. For the applicant to undertake the works on behalf of Council, a Deed of Agreement will need to be prepared whereby the applicant undertakes to: undertake all works to Council specifications; meet all costs associated with construction of the road and take responsibility for future maintenance of the road, whilst the road only provides access to the subject land. Please note that these requirements are not definitive and further requirements may be requested prior to finalisation of the agreement.</p> <p>4. Team Leader – Development Engineering has recommended the following design requirements for the proposed driveway access:</p> <ul style="list-style-type: none">a. all-weather surface;b. minimum carriageway width of 3 metres;c. minimum road shoulder width of 1 metre;d. passing bays at appropriate distances;e. no kerb and gutter, with drainage provided by grass swales on the edge of the carriageway;f. AUSPEC to be the technical guidelines in design and construction;g. all services to be provided under the shoulder;h. no cul-de-sac required at the end of the road, however separate entry and exit to be provided at the property boundary.i. the design is to incorporate: cross-sections,
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Pre-Lodgement Notes 10 January 2008

NOTE:

- All documentation greater than 10 pages submitted with the application is to be accompanied by an electronic copy in a format compatible with Council's operating system.
- Development Applications lodged after 1 July 2005 can be tracked on Council's web page - www.warringah.nsw.gov.au
- Warringah Local Environmental Plan 2000 was last amended on Friday 15 September 2005. All Development Applications lodged after this date should reflect changes from Amendment No. 11.

MEETING COMMENCED AT: 11.40am

MEETING FINISHED AT: 12.40pm

Note: No pre-application meeting can provide an authoritative statement as to the likely outcome of an application. A determination can only be made following the lodgement of an application and the completion of the assessment process.

