

Memo

Department

To: Northern Beaches Local Planning Panel
Cc: Lashta Haidari, Peter Robinson
From: Adam Mitchell
Date: 01 September 2021
Subject: DA2021/0985
Record Number: 2021/614600

Dear Panel,

The Assessment Report prepared by Council for development application no. 2021/0985 at Lot 100/ Meatworks Avenue, Oxford Falls has been reviewed by the Applicant's subdivision certifier who notes an omission on Page 9 of the report relating to the Strata Schemes Development Act 2015 section.

The omission relates to the reference of lot 25 within Stage 1 of the contract. The change to the report suggested does not alter the conclusions or conditions of the report, nor the final subdivision.

That section is copied below, with the change highlighted in yellow. No other changes to the report are made.

Strata Schemes Development Act 2015

The Strata Schemes Development Act 2015 repeals the Strata Schemes (Freehold Development) Act 1973 and the Strata Schemes (Leasehold Development) Act 1986.

This application pertains to the staged development of strata subdivision of an approved industrial warehouse complex.

Section 73(1) of the Strata Development Schemes Act 2015 provides the following explanation of staged development:

- (1) The proposed development in stages of a parcel subject to a strata scheme consists of—*
- (a) the progressive improvement of the parcel by the construction of buildings or the carrying out of works on development lots, and*
 - (b) the subsequent subdivision of each development lot and the consequential adjustment of the unit entitlement of lots in the scheme.*

A staged development strata plan requires the developer to provide a disclosure document which indicates the proposed approved future developments within a

scheme. The disclosure document is called a *Strata Development Contract (SDC)*, prepared in the Approved Form from the Registrar General of the NSW Land Registry Services.

The SDC provides details of the future subdivision of the parcel of land. All developments will have at least 2 stages and 1 development lot. Stage 1 is the original plan creating the scheme and includes the SDC. The stages described in the contract begin with Stage 2. Each new stage must be a subdivision of a development lot. A new development lot may be created at each stage and must be indicated in the strata plan of subdivision in accordance with the SDC.

There can be 2 types of development identified in an SDC, Warranted Development and Authorised Proposals. Section 73(3) – (4) of the Act describes these as:

(3) The development is carried out subject to a strata development contract that describes separately—

*(a) any proposed development that the developer for the development lot warrants will be carried out and may be compelled to carry out (**warranted development**), and*

*(b) any other proposed development that the developer will be authorised but cannot be compelled to carry out (**authorised proposals**).*

*(4) Warranted development and authorised proposals are referred to as **permitted development** because the owners corporation of the strata scheme and other persons having estates or interests in lots included in the parcel must allow it to be carried out in accordance with the strata development contract.*

There is no Warranted development to be carry out in this consent.

An SDC must include a concept plan. The concept plan is required to separately illustrate the sites proposed for and the nature of building works that will result in the carrying out of permitted development and identifying what is warranted development.

This development application seeks Council to endorse an SDC by way of signing a Certificate of Planning Authority attached to that SDC.

Clause 75 of the Strata Schemes Development Act 2015 (**SSD Act**) outlines the obligations of planning authorities in relation to an SDC as follows:

75 Obligations of planning authorities

(1) A planning authority must not grant planning approval for the subdivision of land by a strata plan for the purposes of the development in stages of a parcel under this Part unless—

(a) the proposed strata plan includes a development lot, and

(b) the application for the planning approval is accompanied by a proposed strata development contract.

(2) When a planning authority grants a planning approval in accordance with this section, it must certify in the approved form that carrying out the permitted development would not contravene—

(a) any condition subject to which the approval was granted, or

(b) the provisions of any environmental planning instrument in force when the approval was granted, except to the extent, if any, specified in the

certificate.

(3) A planning approval that purports to have been granted in contravention of this section is invalid.

This current development application is accompanied by a Strata Development Contract prepared in the Approved Form and includes a concept strata plan.

The SDC details that Stage 1 of the development:

- Is illustrated in the accompanying strata plan;
- Will be completed upon registration of the plan;
- Contains lots 1 to 21 and lot 25;
- Upon registration of Stage 1 it is intended to create development lot(s) 22, 23 & 24 (being Stages 2, 3 and 4):
Stage 2 – Lot 22
Stage 3 – Lot 23
Stage 4 – Lot 24

The developer has detailed that Stages 2, 3 and 4 are Authorised Proposals – proposed development not subject to a warranty. The approval of this application does not include nor imply the granting of development consent for the construction of buildings or removal of any vegetation.

The land (Lot 100 in DP 1023183) is burdened by a Positive Covenant. The terms of that Positive Covenant require the bushland on site to be managed, conserved, rehabilitated and protected as documented in an approved Biodiversity Management Plan. The carrying out of the strata subdivision as sought does not impact the terms of the Positive Covenant and the consent authority may be satisfied that the bushland will be maintained as intended by the parent development consent. A condition shall be applied to highlight this and ensure it is captured in the strata plan.

The consent authority is satisfied that carrying out of permitted development as detailed on the SDC would not contravene any condition subject to which the approval was granted, nor the provisions of any environmental planning instrument. The terms of the Positive Covenant remain and the protection of bushland must continue.

Conclusion

Please note that Council's Assessment Report has been updated to reflect this omission.

Yours sincerely,



Adam Mitchell
Principal Planner