



Planning Assessment Report

Application to Modify Development Consent

MOD 193-12-2005 modifying DA 12-1-2005

1 SUMMARY

MOD No. 193-12-2005 was lodged with the department by David Crane and Associates on 20 December 2005 pursuant to Section 96 (1) of the Environmental Planning and Assessment Act, 1979.

The application seeks to modify the consent given to Development Application DA 12-1-2005 located at Lots 12 and 13 DP 579733, The Princes Highway, Kiama Heights. The application was approved by the Minister on 28 July 2005. Therefore, the Minister for Planning is the consent authority for the modification.

The proposed modification is the deletion of condition of consent B1 on the grounds that it is superfluous.

The application has been assessed in accordance with the statutory requirements of the Act. It is recommended that the modification application be **approved**.

1.1 Relevant approvals:

DA12-1-2005 sought to develop Lots 12 and 13 DP 579733, The Princes Highway, Kiama Heights in the Kiama Council Local Government Area for the purpose of subdivision by boundary adjustment and erection of a dwelling house, landscaping and on-site effluent disposal system. The application was approved on 28th July 2005 by the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration). The Consent is Tagged 'B'.

2 THE PROPOSED MODIFICATIONS

The applicant is seeking, under Section 96 (1) to modify the approved development consent by deletion of condition B1 as follows:

B1 Copy of the approved subdivision certificate required prior to Issue of Construction Certificate

The applicant shall submit to the satisfaction of the consent authority or the council a copy of the approved subdivision Certificate prepared showing easements and encumbrances pursuant to Section 88B of the Conveyancing Act 1919, prior to the issue of the Construction Certificate.

The applicant contends that this condition directly conflicts with another condition, E3. "Condition B1 requires the approved subdivision Certificate to be submitted prior to the issue of a Construction Certificate whereas Condition E3 requires that the subdivision certificate not be issued until an Occupation Certificate has been submitted.

Clause E 3 reads:

E3 Other details required prior to Issue of Subdivision Certificate

The Applicant shall submit to the satisfaction of the council the following information, prior to the issue of the Subdivision Certificate:

- (1) *Documentary evidence of the payment of the open space/ community facility/ transport and access contribution(s),*
- (2) *An Occupation Certificate, and*
- (3) *Documentary evidence that the property has been developed in accordance with plans approved by Development Application No. 12-1-2005 and of compliance (or a Compliance Certificate) with the conditions of that consent.*

The applicant wishes to accept condition E3.

3 STATUTORY FRAMEWORK

Section 96(1) of the Environmental Planning and Assessment Act, 1979 provides that the consent authority may, on application being made by the applicant, modify a development consent granted by it to correct a minor error, misdescription or miscalculation.

4 CONSULTATION / PUBLIC EXHIBITION

Consultation of the proposal was not required. The condition was a standard Departmental condition, not requested by Council.

5 CONSIDERATION

5.1 Conflict of conditions

There is an error. The intention of condition B1, a standard condition is to ensure that the subdivision is carried out before the building is complete. Condition E3 requires evidence that the building complies with the approved plans before subdivision is permitted.

The conditions do conflict. Since the proposed house is to be built over the boundary of two lots, it makes more sense for condition E3 to be applied. Inclusion of condition B1 was an inadvertent error in including an irrelevant standard condition. No change to the approved development will occur as a result of the deletion of this condition.

A plan showing the proposed development and the boundary change is at tag **A**. The consent conditions for DA12-1-2005 are at tag **B**.

5.2 Section 96

The application is considered to meet the prerequisites of Section 96(1) of the Act in that the proposed modifications will correct a minor error made in the original consent conditions.

6 CONCLUSION

The Minister for Planning is the consent authority for the proposed S96(1) modification.

The application has been considered with regard to Section 96(1) of the Act. The proposed modification will correct a minor error in the application of conditions. There will be no change to the approved development.

It is considered that the application to delete Condition B1 from the conditions of consent given to Development Application DA 12-1-2005 by the Minister on 28 July 2005 is acceptable and should be approved.

7 RECOMMENDATION

It is recommended that the Deputy Director General, Office of Sustainable Development Assessments and Approvals as delegate for the Minister for Planning as described in the instrument of delegation dated 12 September 2005, pursuant to Sections 81 and 96(1) of the *Environmental Planning and Assessment Act, 1979* and clause 122 (2) of the *Environmental Planning and Assessment Regulations, 2000*:

- (A) **approve** the application and
- (B) authorise the Department to carry out notification of determination of the application to modify the consent.

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