

Our Ref: RG:NH:40374
Your Ref:

3 December 2015

The Secretary
Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Attention: Ms Fiona Gibson

Dear Ms Gibson,

**Re: E.A. 06_191 & Modifications ("the Consent")
Orca Southlands/Goodman Botany Industrial Park Development
McPherson St, Banksmeadow**

We write on behalf of our client, Hynlong Pty Ltd, which is the owner of Lot 12 DP 776766, known as 9-13 McPherson Street, Banksmeadow. ("Hynlong site".) Adjacent to the Hynlong site is Springvale Drain that provides drainage for areas to the north of their property and discharges into Botany Bay and our client has provided the information and details more particularly described herein.

To the north and immediately upstream of the Hynlong site is an area of land known as the "Southlands site" (owned partly by Orca and partly by Goodman) that is being subdivided and in part developed for industrial warehousing under the above E.A. approval. The Southlands site is flood affected and dissected by Springvale Drain. The approval to redevelop the Southlands site issued by the Minister for Planning and Infrastructure was granted on a fundamental premise that while development may occur, the provision of flood plain storage shall remain and discharge downstream from the project site is to be effectively controlled, so as to have no adverse flooding impacts on the surrounding properties and area.

Given that the Hynlong site is immediately downstream from the Southlands site and that there have been numerous changes to the proposed Southlands development since its original approval, our client remains deeply concerned that the redevelopment of Southlands may have an adverse environmental impact on their property due to flooding.

As construction on the Goodman owned part of the Southlands site is nearing completion we write to alert and remind the Principal Certifying Authority, the Minister, the Department of Planning and Environment and Botany Bay City Council of the critical need for compliance with the conditions of the Consent, as they are absolutely necessary to prevent adverse flooding impacts on the surrounding properties.

Particular concerns of our client are outlined as follows:

1. Flood Validation

To effectively control the flood storage waters within Southlands, compensatory flood storage areas have been constructed to the west and east of Springvale Drain, along with permanent control structures within and adjacent to Springvale Drain.

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Under the heading "Surface Water and Flooding" in Schedule 3 – Specific Environmental Conditions of the Consent are Conditions 8, 8A, 9, 10, 11, 12, 13 & 14 which detail what flood control structures are to be built and how they will be checked to ensure they are and will remain both effective and adequate.

In summary:

- All flood mitigation works are to be completed prior to the commencement of construction of the warehouse buildings (Condition 9).
- A Hydraulic Modelling Flood Validation Assessment Report is to be submitted to the Secretary of the Department of Planning & Environment and Council within 6 weeks of the completion of the flood mitigation works and prior to the construction of any warehouse units (Condition 10).
- **Within 6 weeks of the completion of the construction of each warehouse and prior to the issue of any Occupation Certificate a Flood Impact Validation is to be undertaken to demonstrate that construction has not changed the flood impact levels, to the satisfaction of the Secretary (Condition 13).**

Accordingly, to ensure that the intent of the Consent is fully realised, **it is essential that no Occupation Certificate be issued until it is demonstrated to the Certifying Authority that the Flood Impact Validation is "to the satisfaction of the Secretary."**

Additionally, as the development has been substantially modified since originally proposed, it is essential that the final Flood Impact Validation clearly indicate that it has been based on a final work as executed survey of all finished surfaces and all finished structures.

2. Ongoing Protection of Flood Storage Areas

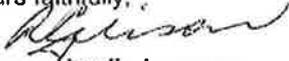
Condition 8A (Schedule 3) & Condition 15 (Schedule 2) of the Consent stipulate that prior to the issue of a Subdivision Certificate, a Section 88B/E instrument shall be registered over the flood detention areas on proposed Lot 6 (already created and known as Lot 102 DP 1189375) and proposed Lot 9, requiring the maintenance and management of the flood detention basin and prohibiting the use of the land at grade other than for the maintenance of the flood detention basin. Importantly, the instrument must nominate Council, the EPA or another relevant Authority as the authority to release, vary or modify the restriction.

Proposed Lot 9 has recently been created (as Lot 9 DP1205673) for the maintenance of the flood detention basin and the accompanying Section 88B instrument appears to comply with the Consent, and importantly has the responsible authority to release, vary or modify this restriction as Botany Bay City Council.

Proposed Lot 6 has also been created (as Lot 102 DP1189375), however, **the Section 88B Instrument accompanying DP1189375 does not comply with the Consent and needs rectification.** Incorrectly, the instrument may be released, varied or modified by the original Proponent themselves, Orica, rather than the relevant Authority as required by the Consent.

On behalf of our client, we request that the necessary measures be taken forthwith to ensure that our clients' property is not detrimentally affected and that the conditions of the Consent are adhered to.

Yours faithfully,


Gibson Howlin Lawyers
Reg Gibson
Executive Lawyer

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cc. Ms Catherine McMahon/Mr Gilead Chen – City of Botany Bay
Mr Dean Goldsmith – Blackett Maquire & Goldsmith, Principal Certifying Authority