

ANNEXURE 10



lindsaytaylorlawyers
planning • environment • local government

Confidential

1 December 2006

Our ref: WMC01906
Your ref: DA508/2005

The General Manager
Woollahra Municipal Council
536 New South Head Road
DOUBLE BAY NSW 2028

Attention: Allan Coker/Peter Kauter

By email

Dear Sir

Council at The Cranbrook School
Land & Environment Court Appeal No. 10834 of 2006
Property: 6& 6A Kent Road, Rose Bay
DA508/2005

Introduction

- 1 I refer to the Council resolution of 25 September 2006 which included the following:
- 2 *'That legal advice be obtained on Council's ability to grant approval of the application under the amended legislation given that the application was lodged with council prior to the legislation being amended.'*
- 3 The development application (**DA508/2005**) was lodged on August 2005. The accompanying Statement of Environment Effects (**SEE**) states *'consent is sought for 'staged' development in accordance with section 80(4) of the Environmental Planning & Assessment Act'*.
- 4 The SEE provides that consent is sought for the following as Stage 1 of the development:
 - Indicative building envelopes;
 - Land uses comprising junior and preparatory school;



- A maximum gross floor area for the school buildings of 6300m²;
 - A landscaping concept;
 - Vehicular access;
 - 70 off street car parking spaces; and
 - Site works comprising demolition of the Bowling Club, site remediation and removal of identified trees and vegetation.
- 5 Since the date of lodgement of the development application, the *Environmental Planning & Assessment Act 1979 (EPA Act)* has been amended in relation to staged development.
- 6 I understand that Council wishes to ensure that it can still grant consent to the development application as a staged development application, given the amendments to the EPA Act.

Relevant Provisions of the EPA Act

At time of lodgement of the development application

- 7 At the time of lodgement of the development application, section 80(4) and (5) of the EPA Act provided:
- (4) *A development consent may be granted:*
 - (a) *for the development for which consent is sought, or*
 - (b) *for that development, except for a specified part or aspect of that development, or*
 - (c) *for a specified part or aspect of that development*
 - (5) *A development consent referred to in subsection (4) may be granted subject to a condition that the development or the specified part or aspect of the development, or any thing associated with the development or the carrying out of the development, must be the subject of another development consent.*

Post amendment

- 8 Section 80(4) and (5) have now been repealed. The new provisions of the EPA Act regarding 'staged development applications' are contained in section 83B of the EPA Act and as follows.
- (1) *For the purpose of this Act, a **staged development application** is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for separate parts of the site area*

to be subject of subsequent development applications. The application may set out detailed proposals for the first stage of development.

- (2) *A development application is not treated as a staged development application unless the applicant requests it to be treated as a staged development application.*
- (3) *If consent is granted on the determination of a staged development application, the consent does not authorize the carrying out of development on any part of the site concerned unless:*
 - (a) *Consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or*
 - (b) *The staged development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.*

- 9 There are no savings and transitional provisions relevant to staged development applications.
- 10 As a result, when determining the development application, Council must apply the law as it stands at the time of its determination. On the assumption that section 83B is not further amended before Council determines the development application, it is clear that:
 - 10.1 The development application is a 'staged development application' for the purposes of the EPA Act, as it falls within the description contained in section 83B(1) of the EPA Act;
 - 10.2 The SEE seeks consent for Stage 1 only of the proposed development, and in my opinion, can be considered as containing a request that Council treat the development application as a staged development application;
 - 10.3 As a result, Council can treat the development application as a staged development application under section 83B of the EPA Act.
- 11 The consequence of treating the development application as a staged development application is that any subsequent consent in respect of the site to which the development application relates, must not be inconsistent with the staged development consent.

Conclusion



- 12 I am therefore of the view that Council can grant consent to the development application as a 'staged development application' under the EPA Act as amended, despite the fact that the development application was lodged prior to the amendments to the stage development application provisions of the EPA Act.
- 13 Please do not hesitate to contact me if you have any questions.

Yours sincerely

Dr Lindsay Taylor

Direct: 8235 9701
Fax: 8235 9799
Mobile: 0417 997 880
Email: lindsay.taylor@lindsaytaylorlawyers.com.au