

27 February 2018

Mr Greg Dyer  
General Manager  
Parramatta City Council  
126 Church Street  
Parramatta NSW 2150

**Attention:**

1. Clayton Logan, Development Assessment Officer
2. Cara Bayley, Building Compliance Officer
3. Adrian Mihaila, Service Manager – Health & Building Services

Dear Council Officers,

**Re: Application to amend development consent & Building Certificate Application**  
**Property: 1-5a Cliff Road and 6-8 Carlingford Road, Epping**

This letter forms part of an application to modify development consent DA/712/2016 under section 96 of the *Environmental Planning and Assessment Act 1979* (Act) addressing, in addition to the completed application form, those matters required to be addressed under clause 115 of the *Environmental Planning and Assessment Regulation 2000* (Regulation).

In this regard, the purpose of this letter is to set out:

- the proposed modifications;
- an explanation as to why the proposed modifications are warranted; and
- various mandatory matters that must be addressed in any modification application under section 96 of the Act.

A further purpose of this letter is also to form part of a Building Certificate Application to provide certainty that the works may remain, despite the fact that works have been executed in the absence of construction certificate(s).

## **1. Background**

Fencing and building identification signs have been erected at the subject property. Council has issued an order which is subject to Land & Environment Court (Court) appeal, case number 2018/30159.

On 22 February 2018 the Court ordered that the section 121B order be stayed (suspended) pending the conclusion of the Court proceedings.

## **2. A description of the development to be carried out under the consent (as previously modified)**

Development consent DA/712/2016 is for the:

Demolition of existing structures and construction of 2 x five storey residential flat buildings comprising 130 units with basement car parking.

## **3. A description of the proposed modification to the development consent**

The proposed modification to DA/712/2016 is to modify the development consent as set out below.

### **3.1 Prospective use**

A modification is sought to the development consent so that it authorises the prospective use of the following works for the purposes of the residential flat building:

- The sandstone landscaping feature and integrated signage and fish pond which has been constructed on the northern elevation of the subject site (facing Cliff Road).
- The signage which has been installed on the southern elevation of the site (facing Carlingford Road) which reads: 'Gordon Elysee'.

### **3.2 New works**

A modification is sought to the development consent so that it authorises the following new works:

- The installation of a wall mounted brass plaque on the sandstone landscaping feature facing Cliff Road. The plaque would read as follows:

The Chinese language name of these apartments appears to the right. A literal translation of these characters is 'Imperial Academy Park'. This phrase describes an academy housing intellectuals in the service of ancient Chinese emperors. In the present context, the Chinese name signifies that the residential apartments are part of a community that values and respects education.

- The installation of an English-language building identification sign on the sandstone landscaping feature facing Cliff Road — immediately under the Chinese-language sign. The sign would say 'Gordon Elysee Epping'.

### **3.3 Removal requirement for screening of the sandstone block and Chinese characters**

A modification is sought to the development consent as follows:

- Remove the existing requirement for sandstone block and Chinese characters (facing Cliff Road) to be screened so that they are not visible from the street.
- Remove the requirement to erect a timber lapped and capped fence.

This will be achieved by the modifications set out below:

### 3.4 Proposed changes to the terms of the development consent

1. In condition 1 omit the words:

and endorsed with the Council's stamp

2. In condition 1 omit the words:

by Council and/or

3. Modify condition number 1 to **omit** the following row in the first table:

<b>Plan No.</b>	<b>Plan Title</b>	<b>Drawn by</b>	<b>Dated</b>
1610S96L-Rev B	Proposed Fountain and Rock Elevations, views and Section A-A	Atelier One	20/3/2017

4. Instead **insert** (into condition 1) the following row in the first table:

<b>Plan No.</b>	<b>Plan Title</b>	<b>Drawn by</b>	<b>Dated</b>
1610S96BC01 Rev C	Fish pond and building identification floor plans, elevations, section	Atelier One	22/02/2018

5. Modify condition number 1 to **insert** the following row in the second table:

<b>Document Title.</b>	<b>Prepared by</b>	<b>Dated</b>
Letter to Parramatta City Council titled 'Re: Application to amend development consent & Building Certificate Application Property: 1-5a Cliff Road and 6-8 Carlingford Road, Epping'	Daintry Associates	27 February 2018

6. **Insert** the following as a new condition 1A:

#### **Use of certain works**

Without limiting the generality of other provisions of this development consent, this development consent authorises (from the date that this condition is inserted into the development consent) the use — for the purposes of the residential flat buildings — of the works identified as:

- a) 'Works as executed that are unauthorised under DA/712/2016/C'; and
- b) 'Works as executed that are authorised under DA /712/2016/C but built without Construction Certificate',

in the drawings listed at the end of this condition.

<b>Drawing No.</b>	<b>Drawing Title</b>	<b>Drawn by</b>	<b>Dated</b>
1610S96BC01 Rev B	Fish pond and building identification sign proposed site plan	Atelier One	21/02/2018

1610S96BC01 Rev C	Fish pond and building identification floor plans, elevations, section	Atelier One	22/02/2018
1610S96BC01 Rev C	Fish pond and building identification sign proposed site plan	Atelier One	22/02/2018
1610S96BC01 Rev C	Fish pond and building identification Cliff Road elevation	Atelier One	22/02/2018
1610S96BC06 Rev B	Building identification sign site plan	Atelier One	26/02/2018
1610S96BC07 Rev B	Building identification sign details	Atelier One	26/02/2018

7. **Delete** condition 3 a.

8. **Insert** the following text into condition 4 after the existing 4(b):

A construction certificate may be issued for the plaque and the building identification sign depicted in drawing 1610S96BC01 Rev C 'Fish pond and building identification floor plans, elevations, section' prepared by Atelier One on 22/02/2018 despite any preconditions set out in this development consent.

#### 4. Classification under section 96

There are three (3) possible types of section 96 applications;

- Section 96(1) - Corrections of minor error, misdescription or miscalculation
- Section 96(1A) - Modification involving minimal environmental impact
- Section 96(2) – Other modifications

Having regard to *ACM Landmark Pty Limited v Cessnock City Council* [2005] NSWLEC 645 wherein Watts C found that development consent can be validly modified under s96(1A) of the *Environmental Planning & Assessment Act 1979* (EPA Act) in circumstances where there would not be any adverse impact on amenity, the proposed modification application is of such minimal environmental impact, that the original development consent can be validly modified under s96(1A) of the EPA Act.

If Council do not agree with this, the application may also be determined under section 96(2) of the EPA Act in any case. The section 96 being resolved, the building certificate need only address the contention of the encroachment upon the road (the survey shows no encroachment upon the road) and the structural adequacy of the works-as-executed (subject to professional engineering certification).

#### 5. The 'substantially the same' test

The applicant gives an undertaking that the proposed development, as modified, will be substantially the same development as the development the subject of the original development consent.

In relation to each of the matters the subject of this modification application, the applicant says:

- **The future use of the sandstone landscaping feature and integrated signage and fish pond.** These works were already authorised by the development consent (as modified). Therefore no issue of substantially the same can arise with regard to them.
- **The use of the signage which has been installed on the southern elevation of the site (facing Carlingford Road) which reads 'Gordon Elysee'.** The signage is merely a building identification sign for the approved development and represents a very minor change both in a quantitative and qualitative sense.
- **The installation of two new signs on the Cliff Road frontage.** One of the new signs is a building identification sign for the approved development and the second sign (the brass plaque) provides an English-language explanation of the already approved Chinese characters. Both changes represent a very minor change both in a quantitative and qualitative sense.
- **The removal of the existing requirement for sandstone block and Chinese characters (facing Cliff Road) to be screened so that they are not visible from the street.** The works were not part of the original development consent. They were inserted in a modification. The removal of a requirement imposed in relation to works that were approved in a modification cannot raise any issues as to whether the proposed modified consent is substantially the same as the existing consent.
- **Remove the requirement to erect a timber lapped and capped fence.** The Cliff Road frontage already has a 1.8 metre high fence, other than where the sandstone block and Chinese characters are located. The presence of a timber lapped and capped fence in this small stretch of street frontage is an extremely minor matter which has no quantitative or qualitative significance in the context of the development consent.

Applying these tests the development as proposed to be modified is substantially same development.

## 6. Reasons in support of the proposed modifications

These changes have merit for the reasons set out below.

- **The future use of the sandstone landscaping feature and integrated signage and fish pond.**

These works were already authorised by the development consent (as modified).

The Applicant commissioned Steven Waters of LMW Design Group Pty Ltd, a civil engineer, to carry out an inspection of the works to prepare an engineering certificate. The certificate is dated 14 February 2018 and forms part of this application (**the engineering certificate**). Mr Waters concluded that the works are structurally adequate, in accordance with Australian standards (AS1170 and AS3600) to support the load.

The Applicant commissioned Martin Xu, a registered surveyor, to carry out a survey of land and prepare a sketch. Mr Xu's letter is dated 13 December 2017. His sketch is reference 13748-D3 and is dated the same day. Both form part of this application (**the surveyor's**

report). These documents confirm no encroachment onto the road reserve by these works.

The only reason that this modification to the development consent has been sought (to authorise prospective use) is that these works were erected without a construction certificate.

- **The use of the signage which has been installed on the southern elevation of the site (facing Carlingford Road) which reads 'Gordon Elysee'.** The signage is merely a building identification sign for the approved development. The sign assists visitors to the property in identifying the buildings. The surveyor's report confirms that there is no encroachment onto the road reserve by this sign. Building identification signs are ancillary to and a common element of most developments, in addition they are permissible with consent in the R4 zone as discussed in more detail below.
- **The installation of two new signs on the Cliff Road frontage.** One of the new signs is a building identification sign for the approved development and the second sign (the brass plaque) provides an English-language explanation of the already approved Chinese characters. The signs are permissible with development consent. The English-language name sign assists visitors to the property in identifying the buildings. The brass plaque will provide helpful information to non-Chinese speakers about the meaning and purpose of the Chinese characters.
- **The removal of the existing requirement for sandstone block and Chinese characters (facing Cliff Road) to be screened so that they are not visible from the street.** The sandstone block is of high quality and is visually attractive. The Chinese characters add to the character of the building and contribute to the diversity of built form in the locality. Neither present in a manner that makes it unsightly. The visual impact of both is acceptable.
- **Remove the requirement to erect a timber lapped and capped fence.** The Cliff Road frontage already has a 1.8 metre high fence, other than where the sandstone block and Chinese characters are located. There is no actual need for a fence in this location as the sandstone block serves the same practical function as a fence. The only possible need for a fence is as a screen to prevent the sandstone block and Chinese characters being seen from the street. However, as explained above, there is nothing about the appearance of these features that makes it visually unacceptable. Therefore no fence is required.

## 7. Relevant Statutory Planning Considerations

### 7.1 Hornsby Local Environmental Plan 2013 (LEP)

The property is zoned R4. The LEP land use table provides that Building identification signs are permissible with development consent. They are not exempt or complying development under [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#).

Building identification signs are defined by the LEP as:

*"building identification sign means a sign that identifies or names a building and that may include the name of a building, the street name and number of a building, and a logo or other symbol but does not include general advertising of products, goods or services."*

The building identification signs in contention fall squarely with the above definition, noting that this is the Standard Instrument definition.

The R4 zone objectives provide no assistance in discerning the form of building identification signs that would be acceptable in the R4 zone. The LEP provides no specific development standards.

## **7.2 State Environmental Planning Policy No 64—Advertising and Signage (SEPP 64)**

SEPP 64 provides that:

**“building identification sign** has the same meaning as in the Standard Instrument.”

Clause 3 of SEPP 64 provides:

### **“3 Aims, objectives etc**

*(1) This Policy aims:*

*(a) to ensure that signage (including advertising):*

*(i) is compatible with the desired amenity and visual character of an area, and*

*(ii) provides effective communication in suitable locations, and*

*(iii) is of high quality design and finish, and*

*(b) to regulate signage (but not content) under Part 4 of the Act, and*

*(c) to provide time-limited consents for the display of certain advertisements, and*

*(d) to regulate the display of advertisements in transport corridors, and*

*(e) to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.*

*(2) This Policy does not regulate the content of signage and does not require consent for a change in the content of signage.”*

Part 2, Clause 8 of SEPP 64 provides in relation to “Signage Generally”:

### **“8 Granting of consent to signage**

A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:

*(a) that the signage is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and*

*(b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.”*

Schedule 1 provides Assessment criteria. Applying this criteria I set out my opinions as follows.

## **1 Character of the area**

- Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? Yes, the signage does not set an undesirable precedence in the locality.
- Is the proposal consistent with a particular theme for outdoor advertising in the area or locality? There is no documented theme.

## **2 Special areas**

- Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas? The signs do not detract from the amenity or visual quality of the locality.

## **3 Views and vistas**

- Does the proposal obscure or compromise important views? No.
- Does the proposal dominate the skyline and reduce the quality of vistas? No.
- Does the proposal respect the viewing rights of other advertisers? N/A it is not an advertising sign.

## **4 Streetscape, setting or landscape**

- Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? Yes.
- Does the proposal contribute to the visual interest of the streetscape, setting or landscape? No, the sign is contextually small in scale
- Does the proposal reduce clutter by rationalising and simplifying existing advertising? N/A.
- Does the proposal screen unsightliness? N/A
- Does the proposal protrude above buildings, structures or tree canopies in the area or locality? No, the building identification signs are visually benign in their height, shape, bulk and configuration.
- Does the proposal require ongoing vegetation management? No.

## **5 Site and building**

- Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? Yes
- Does the proposal respect important features of the site or building, or both? Yes
- Does the proposal show innovation and imagination in its relationship to the site or building, or both? Yes, it is contemporary in form and in the use of English and Chinese given the nature of Epping's changing social fabric.

## **6 Associated devices and logos with advertisements and advertising structures**

- Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed? N/A the signs are relatively small structures.

## **7 Illumination**

- Would illumination result in unacceptable glare? N/A no illumination proposed
- Would illumination affect safety for pedestrians, vehicles or aircraft? N/A no illumination proposed
- Would illumination detract from the amenity of any residence or other form of accommodation? Yes - no illumination proposed
- Can the intensity of the illumination be adjusted, if necessary? N/A
- Is the illumination subject to a curfew? N/A

## **8 Safety**

- Would the proposal reduce the safety for any public road? No
- Would the proposal reduce the safety for pedestrians or bicyclists? No
- Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas? No

Applying SEPP 64 the building identification signs are consistent with the objectives of SEPP 64 as set out in clause 3 (1) (a) and Schedule 1 considerations.

### **7.3 Hornsby Development Control Plan 2013 (DCP)**

A search of Part 3 of the DCP, relating to residential development, failed to disclose any aims, objectives or controls that address building identification signs. A search of Council's website revealed no other policy that guides building identification signs.

Absent any specific DCP objectives or controls it is sufficient to rely upon the aims and assessment criteria in SEPP 64. This approach is confirmed by reference to Council's website site page: <http://www.hornsby.nsw.gov.au/property/common-enquiries/signs-and-banners> :

*"Approval may be required for some advertising signage. For more information refer to the NSW Government Planning Portal."*

## **8. A description of the expected impacts of the modification**

No adverse impacts of the modification (of any significance) are expected.

The extent of the proposed modification is so minor in scale and lacks any significant adverse impacts. The proposed modification is of minimal environmental impact (as per the test in section 96(1A)).

There are no adverse environmental effects (of any significance) upon occupants, neighbours or the general public.

## 9. Statement re certain applications

The application is not being made to:

- The Land and Environment Court under section 96 of the EP&A Act; or
- To the consent authority under section 96AA of the EP&A Act.

The applicant has undertaken to appeal the modification application and the building certificate application to the Land and Environment Court at the first opportunity.

## 10. Building certificate application

This letter also forms part of a building certificate application. A building certificate may be issued in relation to a 'building'. A 'building' is defined to mean a structure or any part of a structure.

The application for a building certificate is in relation to the structures or parts of structures that are identified in the drawings listed in the table below and labelled in any of the following ways:

- 'Works as executed that are unauthorised under DA/712/2016/C';
- 'Works as executed that are authorised under DA /712/2016/C but built without Construction Certificate'; and
- 'Works to which only the Building Certificate applies to'.

<b>Drawing No.</b>	<b>Drawing Title</b>	<b>Drawn by</b>	<b>Dated</b>
1610S96BC01 Rev B	Fish pond and building identification sign proposed site plan	Atelier One	21/02/2018
1610S96BC01 Rev C	Fish pond and building identification floor plans, elevations, section	Atelier One	22/02/2018
1610S96BC01 Rev C	Fish pond and building identification sign proposed site plan	Atelier One	22/02/2018
1610S96BC01 Rev C	Fish pond and building identification Cliff Road elevation	Atelier One	22/02/2018
1610S96BC06 Rev B	Building identification sign site plan	Atelier One	26/02/2018
1610S96BC07 Rev B	Building identification sign details	Atelier One	26/02/2018

The reasons why the certificate should be granted are briefly set out under each item.

- **The sandstone landscaping feature and integrated signage and fish pond.**

These works were authorised by the development consent, but erected without a construction certificate.

The engineering certificate confirms that the works are structurally adequate, in accordance with Australian standards (AS1170 and AS3600) to support the load.

The surveyor's report confirms no encroachment onto the road reserve by these works.

- **The use of the signage which has been installed on the southern elevation of the site (facing Carlingford Road) which reads 'Gordon Elysee'.**

The sign has planning merit (see the merit assessment in relation to the modification application above).

The surveyor's report confirms that there is no encroachment onto the road reserve by this sign.

- **Fencing on the northern elevation.**

The fence was the subject of the development consent and a construction certificate. (The Council has not suggested otherwise.)

The surveyor's report confirms that there is no encroachment onto the road reserve by this fencing.

Council should give favourable consideration to the amendment and building certificate application proposed.

Please don't hesitate to contact me on 0408 463 714 or by email [brett@daintry.com.au](mailto:brett@daintry.com.au).

Yours faithfully,



Brett Daintry, MPiA, MAIBS, MEHA  
Director