

## COPY OF EMAIL PROVIDED BY APPLICANT IN RESPONSE TO COUNCIL MOTION

From: Ross Anderson [mailto:XXXX]  
Sent: Monday, 19 March 2018 12:28 PM  
To: NAME OF ASSESSING OFFICER  
Subject: D91/0266.01

Hi [NAME OF ASSESSING OFFICER], apologies for delay.

I write in response to the Council meeting request that **“Recommended that this item be deferred to 5 April 2018 Planning Committee meeting to seek further clarification from the Applicant regarding the fire safety and tenure of this unit.”**

The proposal as prepared by DAC was for a BC application which included the toilet and a S96 Modification application for the 3 Bedroom that made no reference to the toilet. Two separate applications. I am advised that at Council request DAC submitted them co-currently. Council advise that the original plans submitted did not highlight the toilet, at Council request, I attended Council Offices and drew on the plan produced and provided the location of the toilet.

On the 18<sup>th</sup> January 2018 the Council issued Building Certificate BC17-0126 which includes the toilet.

On the 15<sup>th</sup> February I advised the Council that I did not wish to include the additional toilet in the Application, that being S96 Modification Application as the matter was resolved by the issuing of BC17-0126 and therefore should not be referred to throughout the report as it no longer forms part of the application (as per SEE DATED November 17<sup>th</sup> 2017 and proposed floor plan on page 174).

I respectfully request that reference to the toilet be removed from the Report.

Could you clarify if there were two or three submissions. Corporate Compliance advise 2 the Report advises 3.

### Conditions

Conditions of approval have to be reasonable and relevant. Section 80A of the Environmental Planning and Assessment Act 1979:

1. “Conditions – generally A condition of development consent may be imposed if:
  - (a) it relates to any matter referred to in section 79C (1) of relevance to the development the subject of the consent, or
  - (b) it requires the modification or surrender of a consent granted under this Act or a right conferred by Division 10 in relation to the land to which the development application relates, or
  - (c) it requires the modification or cessation of development (including the removal of buildings and works used in connection with that development) carried out on land (whether or not being land to which the development application relates), or
  - (d) it limits the period during which development may be carried out in accordance with the consent so granted, or
  - (e) it requires the removal of buildings and works (or any part of them) at the expiration of the period referred to in paragraph (d), or
  - (f) it requires the carrying out of works (whether or not being works on land to which the application relates) relating to any matter referred to in section 79C(1) applicable to the development the subject of the consent, or
  - (g) it modifies details of the development the subject of the development application.
  - (h) it is authorised to be imposed under section 80(3) or (5), subsections (5) – (9) of this section or section 94, 94A, 94EF or 94F.”

### Car Parking

On page 163 of the report, it is stated council have no objection to the creation of the third bedroom in principle. It goes on to also confirm there is sufficient unallocated car parking on site (32 spaces) to

cater for the additional car parking requirement generated as a result the third bedroom (0.5 car park space). This statement confirms there is no need for any of the communal spaces to be dedicated for the exclusive use of Unit 3 as by council's own emission the communal spaces are adequate to accommodate the 0.5 space generated by this room conversion. As such the inclusion of this condition is not considered reasonable and cannot be applied "in the public interest" under Section 80A of the Environmental Planning and Assessment Act 1979, 1(a) (above) as it has been confirmed, by council, that the communal spaces can already accommodate the 0.5 additional car park. Furthermore, the dedication of an additional car park space to Unit 3 may be against the public interest as that space is currently available to all Strata owner's and dedication to Unit 3 could result in it being a vacant space for large periods of time where it would currently be able to be used by others.

The summary of submissions received further refer approval of this third bedroom and the additional 0.5 car park generated by the change as setting a precedence for other residential units in the complex to do the same. As the approved plans show, the other residential units do not have sufficient GFA to accommodate a third bedroom so there is no potential for this precedence.

Furthermore, conditions should not be contrary to public policy and in this instance, public policy is the car park spaces are on common property and as such managed by the Body Corporate for use by all Strat owners. As such, council is going against public policy by attempting to force the exclusive use of an additional car park space to Unit 3.

#### **Application Details (page 174)**

The current DA Application contains all of the works done with reference to the DA and all other works are in the application for the Building Certificate which has been issued. Council have been advised of all work done in the two Applications in order to obtain compliance as required. If this is not the case please advise

I did advise that the toilet did not require a Development Application and that the matter of the toilet would be part of the Building Certificate. I am not aware that I advised it would not require Development Consent, hence the inclusion of the toilet in the Building Certificate Application. My apologies if I have caused confusion.

On page 176 the Council Building Unit advises that the additional toilet has been removed from the application. It was not removed from the BC17/0126 as is evidenced in my application. It was however removed from the DA Application.

#### **Penalty Infringement Notice**

In [NAME OF COMPLIANCE OFFICER]'s letter of 18 September 2017, Council ask the property owner respond and Show Cause in writing as to why council should not issue an Intention to Give an Order or a Penalty Infringement Notice. The property owner did respond and show Cause in writing and followed up this advice in the form of a Building Certificate and Development Application. As the property owner I am doing everything in my power to comply to comply with Council's requests. I have submitted a certificate from a Licenced Electrician certifying that smoke alarms have been connected to the consumer mains power in the locations advised. Having being denied my lawful access to attend to the matter of the toilet as granted by Special Resolution by Owners Corporation and Registered on the Certificate of Title under the Real Property Act 1900 the matter of access is now being dealt with by a Solicitor on my behalf. Hopefully this will be established shortly.

I am on with certification in respect of water works regarding the kitchen relocation which I hope to have before the Council meeting.

Although I have objected to the two conditions above I am willing to comply with all other conditions including an Interim and Final Occupation Certificate, payment of contributions etc.

Ross Anderson