

EXHIBIT
Gen 5

Memorandum

AUBURN CITY COUNCIL

To: John Burgess – General Manager

From: Glenn Francis, Manager Development Assessment

Date: 23 August 2012

File No. CC-26/2008/A

Subject: Response to Questions raised by the General Manager dated 21 August 2012 in relation to 3 New Street, Lidcombe

Further to the meeting on the 22 August 2012 at 3:30pm in your office whereby you presented a memo dated 21 August 2012 requesting answers to a number of questions for the development at 3 New Street, Lidcombe. Your memo required a response by 4:00pm 23 August 2012. After a discussion you agreed to extend the deadline to 4:00pm 24 August 2012 due to my Guardian training and JRPP commitments.

The information and response to your questions is provided as follows:

Questions

1. *What requests were made by the owner or his builder to undertake any inspections?*

Requests for inspections for a development requires the builder, contractor or owner to either call Council's Switchboard and book an inspection that is recorded in GEAC or call the building surveyor directly.

Inspections were requested were and carried out. These inspections have been carried out on 13 August 2004, for the piers under CC-141/2004. On the 5 November 2009, 30 November 2009, 30 November 2009 and 5 January 2011 for the frame under CC-26/2008. 15 February 2011 and 18 October 2011 for Final inspection under CC-26/2008/A.

Final inspections have not been electronically recorded and are located on the working file. These have been TRIMed as follows: T064679/2012, T064689/2012, T064690/2012, T064093/2012, T064694/2012, T064699/2012, T064700/2012.

2. *If no requests were made how can the owner or his building satisfy the requirements of critical stage (mandatory) inspections ?*

Inspections were requested for the development. All inspections that were requested were undertaken by Council's certification staff.

In accordance with Section 109E (3)(d) of the Environmental Planning and Assessment Act 1979 and under Clause 162A(6) of the Environmental Planning and Assessment Regulation 2000 a Class 9b building requires 2 mandatory inspections being stormwater connections prior to covering and a final inspection prior to Occupation certificate.

In accordance with Clause 162A (2) of the Environmental Planning and Assessment Regulation 2000, the PCA may agree for another Certifying Authority to carry out a mandatory inspection. Council as the PCA accepted a Hydraulic Engineers certification and Works as Executed Plans as part of the stormwater connection mandatory inspection. Therefore it is accepted that the owner and or his builder has satisfied Clause 162A of the Environmental Planning and Assessment Regulation 2000.

3. Why didn't Council pursue any action under Section 109M of the Environmental Planning and Assessment Act at or shortly following the initial inspection recorded by Harley Pearman on October 18, 2012.

Section 109M of the Environmental Planning and Assessment Act 1979 identifies that Council has the provision to issue Penalty Infringement Notices for occupying structures without an Occupation Certificate, and a \$1,500 Penalty Infringement Notice may be issued for the unauthorised occupation of the premises.

As you are aware the matter only came to my attention following the issuing of staff invitations to the Auburn City Sports Awards. After being aware of the occupation I had a meeting on the 14 November 2011 with yourself and the Director of Planning and Environment.

At this meeting you were briefed as to the situation and the issue was raised as to whether you wished to commence legal proceedings or the alternative to resolve the issues and work with the owner to achieve compliance.

You gave a direction that Council was to work with the developer to seek full compliance and ensure that all aspects of the development comply. You were to receive regular updates regarding the process.

Any issue of PINN's would have eroded any co-operation and been a direct contradiction of your instruction to get the building to comply.

4. Given the extent of building works being undertaken at the site ie cranes standing concrete wall panels why did no member of staff initiate inspections?

Clause 163 of the Environmental Planning and Assessment Regulation 2000 stipulates that the principal contractor for a building site, or the owner-builder, must notify the principal certifying authority (council) at least 48 hours before each required inspection needs to be carried out. Hence it is the responsibility of the owner or his builder to contact Council at each mandatory inspection. The PCA has no obligation to inspect a site unless he has been called under this clause.

5. When did occupation commence of the building?

Council was not notified of occupation of the premises. I became aware of the occupation of the building when Council booked the function centre for the Auburn City Sports Awards.

After becoming aware of the occupation of the building appropriate steps were taken to remedy the situation as directed by yourself.

6. Given the mandatory nature of the inspection condition of the Construction Certificate how can you justify the issue of an interim occupation certificate and the requirements of Section 109H of the Environmental Planning and Assessment Act?

As previously mentioned the building complied with the mandatory inspections required by the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000.

Prior to Council issuing an Interim Occupation Certificate, the certifying authority must be satisfied of the following under Clause 109H (3) of the Environmental Planning and Assessment Act 1979 that is reproduced below:

An interim occupation certificate must not be issued to authorise a person to commence to occupy or use a partially completed new building unless:

(a) a development consent or complying development certificate is in force with respect to the building, and - Development consent: DA 483/ 1998, DA 862/1999, DA 852/1999, M 93/ 2004, DA 483/ 1998A, DA 483/ 1998 C, DA 483/ 1998 E, and DA 483/ 1998 F

(b) in the case of a building erected pursuant to a development consent but not a complying development certificate, a construction certificate has been issued with respect to the plans and specifications for the building, and – A construction certificate has been issued CC26/2008/A

(c) the partially completed building is suitable for occupation or use in accordance with its classification under the Building Code of Australia, and – The building is suitable for occupation in accordance with its classification under the BCA

(d) such other requirements as are required by the regulations to be complied with before such a certificate may be issued have been complied with. – All other requirements as required under the Act and Regulations have been complied with as mentioned above including relevant certification, certificates and clearance by NSW Fire and Rescue.

7. Given the gravity of the fire inspections and Orders issued by fire why did you not recommend immediate court action?

As the General Manager you were briefed as to the situation and the issue was raised as to whether you wished to commence legal proceedings or the alternative to resolve the issues and work with the owner to achieve compliance. You directed that we were to seek compliance and ensure that all aspects of the development comply and that regular updates be provided to yourself regarding the progress.

8. There is no evidence of any written responses to:

- a. Closure Intent of 4 October 2011
- b. Fire Inspection and Orders of 21 November 2011
- c. Closure Order 22 November 2011
- d. Rectification 25 November 2011
- e. No use authorised 1 December 2011

- f. Nothing acceptable 9 December 2011
- g. No compliance 12 December 2011
- h. Further Fire Inspection 4 December 2011
- i. Show cause 22 December 2011

From the owner evident in TRIM. Please provide all dates of meetings, diary and file notes of any and all discussions with the owner, his representatives or the builder and who attended Council?

I have scanned and documented my meetings from Outlook and the following are the TRIM reference numbers: T065119/2012, T065121/2012, T065122/2012, T065123/2012, T065124/2012, T065125/2012, T065126/2012, T065127/2012, T065128/2012, T065129/2012, T065130/2012, T065131/2012, T065132/2012, T065134/2012, T065135/2012, T065139/2012, T065140/2012, T065141/2012, T065143/2012.

9. Why did you create in TRIM a document purporting to be an interim occupation certificate on January 18, 2012 when the re inspection occurred on 19 January 2012?

I did not create an Interim Occupation Certificate on the 18 January 2012.

The Senior Building Surveyor created a draft interim occupation certificate as well as a draft report/memo by starting and completing the Interim Occupation Certificate task in GEAC. As the GEAC system is integrated with TRIM any and all correspondence generated in GEAC is created and retained in TRIM.

This and other documents were used by the Senior Building Surveyor to prepare the Interim Occupation Certificate. Council records indicate that the Interim Occupation Certificate was issued on the 2 April 2012.

10. Please advise me what provisions of the Environmental Planning and Assessment Act authorise the issue of a development consent where works have already commenced without consent?

Section 76A of the EPA Act 1979 outlines what development requires consent. Development is defined in Section 4(a) of the EPA Act 1979 as the use of the land. When interpreted in terms of unauthorised or illegal building works the development consent is granting consent for the use and not for the actual construction of the building or the carrying out of work.

A building certificate in accordance with 149A-E of the EPA Act 1979 is obtained to regularise any illegal building works.

11. Can you also inform me where you have the power/authority to authorise the writing off of PINs against landowners where PINs have been raised for works undertaken without any consent from the Council?

I have never raised, issued or written off PIN's against landowners where PINs have been raised for works undertaken without any consent from the Council.

If you have any further questions or queries please advise.

Glenn Francis
Manager Development Assessment

