



**MODIFICATION REQUEST:
Lot 9 Hill Road, Wentworth Point
Amendment of Condition A4 Lapsing of
Approval (MP06_0098 MOD 1)**



Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

September 2012

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1. BACKGROUND

1.1 The Site

Sekisui House Australia Pty Ltd (proponent), has lodged a section 75W application (MP06_0098 MOD 1), seeking to amend the lapsing of the approval at Lot 9 Hill Road, Wentworth Point. The site is located within the Homebush Bay West Redevelopment Precinct, within Auburn local government area. The site is one of 6 designated precincts which are located along a north-west/south-east axis with Hill Road to the west and Homebush Bay to the east (refer to **Figure 1**). The area has been used for industrial purposes for many years and the current zoning is a deferred matter under Auburn Local Environmental Plan (ALEP) 2010.

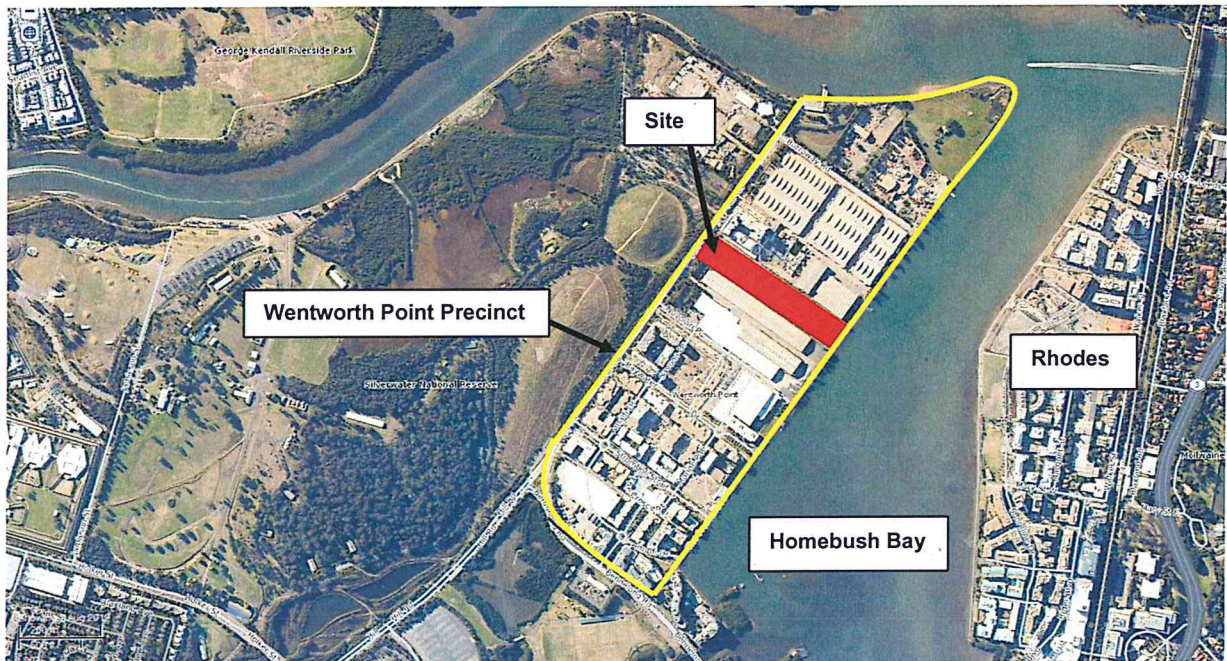


Figure 1: Site location

The site is also in close proximity to the Sydney Olympic Park to the south, the Millennium Parklands to the west, the M4 Motorway and Homebush Bay Drive to the south-east. The site forms one parcel of land within the Homebush Bay West redevelopment precinct, which has been identified as suitable for mixed use redevelopment, being low to medium scale residential apartments. The existing structures on site have been demolished and the site is currently vacant.

1.2 Approval History

Concept Plan

On 21 January 2008, the then Minister for Planning approved a Concept Plan (MP06_0098) for the redevelopment of the site, including:

- a residential development comprising 685 dwellings with a maximum 50,424m² of floor space set across four residential development allotments
- public domain, including roads, a foreshore park, pocket park, and a pedestrian through-link including communal and private open space.

The approved building footprints are depicted in **Figure 2** overleaf.

Pursuant to section 75P(1)(b) of the *Environmental Planning and Assessment Act 1979* (the Act), the concept plan provided that approval to carry out the project was subject to Part 4 of the Act. The proponent has lodged a number of Part 4 applications with Auburn Council to

carry out works in accordance with the concept plan approval. These applications are detailed below.

Part 4 consents

On 27 September 2010, Auburn City Council (council) granted development consent (DA 235/2010) for the demolition of existing structures, importation of landfill and turfing of the site, including retaining walls and fencing. The department understands that works in accordance with this consent are currently taking place on site.

Council granted development consents (DA 308/2012 & DA 309/2012) on 19 December 2011, for the construction of the Block 9D residential flat building comprising 138 units, basement car parking and associated works, and construction of the Block 9C residential flat building comprising 148 units over basement car parking and associated works respectively.

On 31 December 2011, council gave consent for the subdivision of the subject site into three lots (DA 109/2011). On 7 February 2012, council gave consent to DA 462/2010 that allowed for public domain and infrastructure works comprising roads, parks, services and associated works.

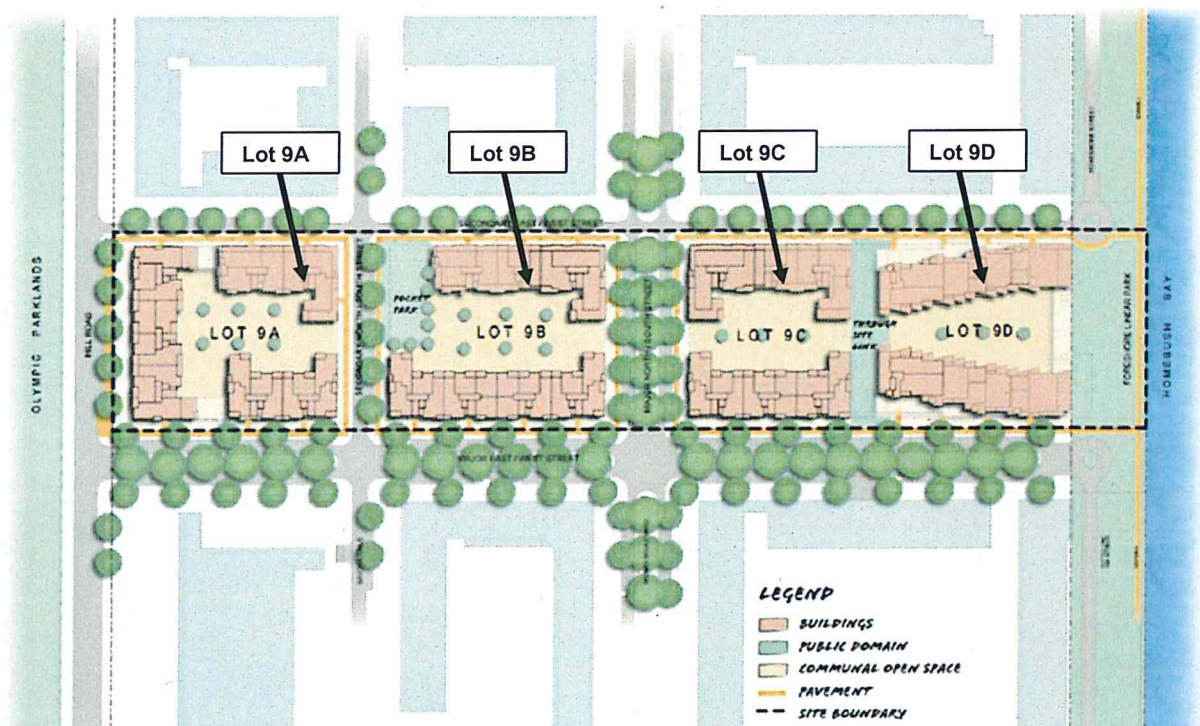


Figure 2: Approved Concept Plan building footprints

2. PROPOSED MODIFICATION

2.1 Modification Description

The subject modification (MOD 1) originally sought to amend Condition A4 of the concept plan approval to extend the lapsing date of approval which the proponent believed to be 28 January 2013 (5 years from the date of determination of the application).

On 6 September, the proponent advised the department that works that would ordinarily 'commence' the approval have been undertaken, via DA 235/2010 issued by the council. The proponent requested that the wording of Condition A4 be modified as in their view its wording was unclear and could be interpreted incorrectly. The current condition reads:

A4 Lapsing of Approval

Approval of the lot 9 Hill Road, Homebush Bay Concept Plan shall lapse 5 years after the determination date in Part A of Schedule 1."

The department agrees it is somewhat ambiguous, particularly as no "specified action" in accordance with section 75Y(1) of the Act has been prescribed. Consequently, it is the department's view that the approval would in fact expire on 1 October 2016 (5 years from the date of the repeal of Part 3A), by virtue of the Part 3A transitional provisions under Schedule 6 clause 11 of the Act. To rectify this issue and remove any ambiguity the proposed wording is as follows:

A4 Lapsing of Approval

The approval will lapse five years from the date of this approval unless works the subject of any related application (Part 4 or otherwise) are physically commenced, on or before that lapse date."

The effect of this is that the lapsing date will now be 21 January 2013. This is a matter of providing clarity in the approval, as if the work has commenced, the lapsing date will now be of no effect.

3. STATUTORY CONTEXT

3.1 Changes to Part 3A

In accordance with clause 3 of Schedule 6A of the *Environmental Planning and Assessment Act 1979* (the Act), section 75W of the Act as in force immediately before its repeal on 1 October 2011, and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove of the carrying out of the project under section 75W of the Act.

3.2 Modification of the Minister's Approval

Section 75W (2) of the Act provides that a proponent may request the Minister to modify the Minister's approval of a project. The Minister's approval of a modification is not required if the approval of the project, as modified, would be consistent with the original approval. As the proposed modification seeks to amend the wording of Condition A4, the modification will require the Minister's approval.

3.3 Environmental Assessment Requirements

Section 75(3) of the Act provides the Director-General with scope to issue Environmental Assessment Requirements (DGRs) that must be complied with before the matter will be considered by the Minister. DGRs were not issued for this modification as the proponent has addressed the key issues related to the modification request.

3.4 Delegated Authority

The Minister delegated his functions to determine a modification request under section 75W of the Act where:

- the relevant local council has not made an objection
- a political disclosure statement has been made but only in respect of a previous application
- there are less than 10 public submissions in the nature of objections.

Council raised no objection to the application, and no public submissions were received. A political disclosure statement has been made in respect of a previous application (the concept plan application) but not the subject modification. Accordingly, the modification application is able to be determined under delegation by the Deputy Director-General, Development Assessment and Systems Performance.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under section 75X(2)(f) of the Act and clause 8G of the Environmental Planning & Assessment Regulation 2000, the modification request was made publically available on the department's website. Council reviewed the proposed modification and raised no objection to the application. No submissions were received from the public.

5. ASSESSMENT

The proposed wording change is administrative in nature and merely removes any ambiguity associated with the wording of the condition. The proposed changes also ensure that the wording of the condition meets the requirements under section 75Y(1) of the Act by prescribing a "specified action".

6. CONCLUSION


The department has considered the proposed modification to the concept approval for MP 06_0098 (as modified), and the key issues associated with the modification. The department is satisfied that the issues are minor and the re-wording of Condition A4 is administrative in nature.

It is therefore recommended that the modification application be approved, as outlined in the recommended Instrument of Modification.

7. RECOMMENDATION

It is recommended that the Deputy Director-General, Development Assessment & Systems Performance:

- a) **Consider** the findings and recommendations of this report;
- b) **Approve** the modification, subject to conditions, under section 75W of the *Environmental Planning and Assessment Act, 1979*, and;
- c) **Sign** the attached Instrument of Modification Approval (**Tag D**).


Director 12/9/12
Metropolitan and Regional Projects North


Executive Director
Major Projects Assessment

14.9.12


Deputy Director-General
Development Assessment & Systems Performance

23/9/12

APPENDIX A MODIFICATION REQUEST

<http://majorprojects.planning.nsw.gov.au>

APPENDIX B SUBMISSIONS

No submissions in the nature of objections were received.

APPENDIX C CONCEPT PLAN APPROVAL

APPENDIX D RECOMMENDED MODIFYING INSTRUMENT
