



MODIFICATION REQUEST:

Mixed Use Development

78-90 Old Canterbury Road, Lewisham

MP 08_0195 MOD 2

Modification to voluntary Planning Agreement

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

February 2013

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1. BACKGROUND

The purpose of this report is to assess a request to modify the approved Concept Plan for the Lewisham Estate Mixed Use Development, 78-90 Old Canterbury Road, Lewisham. The modification seeks to modify Term of Approval A3 relating to the preparation of a Voluntary Planning Agreement between the Proponent and Marrickville Council.

1.1 Site Description

The site is within the Marrickville Local Government Area (LGA), approximately 6 kilometres west of the Sydney CBD (Figure 1). The site is also near the boundary of Ashfield LGA.



Figure 1: Local Context Plan (Base Photo Source: Google Maps 2011)

1.2 Previous Approvals

On 15 March 2012, the Planning Assessment Commission (PAC) approved a Concept Plan for a mixed use development consisting of 7 separate buildings ranging in height from 4 to 10 storeys, basement level and at grade car parking, internal and external road works and public pedestrian and cycle pathways.

On 8 January 2013, a modification request (MP 08_0195 MOD 1) was submitted to the Department consisting of changes to building footprints, modifications to access arrangements to onsite parking, an increase in the provision of open space, the amendment of building heights, the introduction of 'dual use' spaces within buildings and the amendment of various conditions of the approval and commitments in the Statement of Commitments. This application is currently on public exhibition until 1 March 2013.

2. PROPOSED MODIFICATION

The Proponent seeks to amend Term of Approval A3 of the approval, which relates to the preparation of a Voluntary Planning Agreement (VPA) between the Proponent and Council for the carrying out of various works of public benefit including upgrades to roads and pedestrian access links to public transport nodes.

The current wording of the Term of Approval does not permit the Proponent to lodge any Development Applications for the future stages of the development with Council until the terms of the VPA are finalised.

As the Proponent now wishes to proceed with the lodgement of a Development Application to Council, amendment of the wording of the Term of Approval is sought as follows:

Voluntary Planning Agreement

- A3** *Prior to the submission of any future application under Part 4 of the Act the Proponent shall provide written evidence to the Director-General that it has entered into negotiations shall be underway with respect to a Voluntary Planning Agreement with between the Proponent and Marrickville Council, in consultation with Transport for NSW, with terms outlined in the EA, PPR and Revised Statement of Commitments including:*
- *upgrade of Hudson Street;*
 - *embellishment and dedication of public open space to the north of Hudson Street;*
 - *upgrade or embellishment of pedestrian and cycle access links to the Lewisham West light rail stop, Lewisham railway station and surrounding residential areas; and*
 - *other parts of the site that will be upgraded, embellished, constructed or dedicated to Council.*

3. STATUTORY CONTEXT

3.1 Continuing Operation of Part 3A to Modify Approvals

In accordance with clause 3 of Schedule 6A of the Environmental Planning and Assessment Act (EP&A Act), Section 75W of the EP&A 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 EP&A Act.

3.2 Modification of a Minister's Approval

The modification application has been lodged with the Director-General pursuant to Section 75W of the EP&A Act. Section 75W provides for the modification of a Minister's approval including "revoking or varying a condition of the approval or imposing an additional condition of the approval."

The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval. However, in this instance, the proposal seeks to modify a specific Term of Approval and therefore approval to modify the application is required.

3.3 Environmental Assessment Requirements

Section 75W(3) of the EP&A Act provides that the Director General may notify the Proponent of environmental assessment requirements (DGRs) with respect to the proposed modification that the Proponent must comply with before the matter will be considered by the Minister.

In this instance, following an assessment of the modification request, it was not considered necessary to notify the Proponent of environmental assessment requirements pursuant to Section 75W(3) with respect to the proposed modification, as suitable information was provided to the Department to consider the application.

3.4 Delegated Authority

The Minister has delegated his functions to determine Section 75W modification requests to the Deputy Director General, Development Assessment & Systems Performance, where:

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

The Department received no public submissions and Marrickville Council has not objected to the proposal. There has been a political donation disclosure made for this application stating that no political donations have been made within the past 2 years, however a political donation was disclosed with a previous application on the site.

Accordingly, the application is able to be determined by the Deputy Director General, Development Assessment & Systems Performance, under delegation.

4. CONSULTATION AND SUBMISSIONS

In accordance with Section 75X of the EP&A Act and clause 8G of the EP&A Regulation, the Director-General is required to make the modification request publicly available. The modification request was made available on the Department's website and referred to Marrickville Council and Transport of NSW (TfNSW) for comment. Due to the nature of the proposed modification, the modification request was not exhibited by any other means.

No public submissions were received and both Council and TfNSW raised no objection to the proposed changes.

5. ASSESSMENT

Timing for finalisation of the VPA

The Proponent is currently required to enter into a VPA prior to lodgement of any Development Application for the future stages of the development to Council. The Proponent is now in a position to submit a Development Application to Council but has not finalised the terms of the VPA. Therefore, the Proponent seeks to amend the wording of the condition to delete the reference to timing for finalisation of the VPA.

The Department acknowledges that the deletion of this reference to timing will not result in any environmental or procedural issues with the assessment of the development. Furthermore, the timing for finalising the VPA may be determined by Council through future conditions of

development consent. Council and TfNSW as the key stakeholders to this requirement have raised no objection to the proposal.

Based on the above points, the Department considers the proposed rewording of Condition A3 to be acceptable in this instance.

6. RECOMMENDATION

It is recommended that the Deputy Director General of Development Assessment & Systems Performance, as delegate for the Minister for Planning and Infrastructure:

- note the information provided in this briefing;
- approve the modification request, subject to conditions; and
- sign the attached modifying instrument (**Tag A**).

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Karen Jones 4/2/13

**Director
Metropolitan & Regional Projects South**



4.2.13

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Approved by:

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**Deputy Director General
Development Assessment & Systems Performance**

APPENDIX A MODIFICATION REQUEST

See the Department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5772

APPENDIX B SUBMISSIONS

See the Department's website at

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APPENDIX C RECOMMENDED MODIFYING INSTRUMENT
