



MODIFICATION REQUEST:

120-128 Herring Road, Macquarie Park

***MP09_0195 MOD 4 – Modifications to
Building E - floor levels of lobby entrance /
car park and landscaping***



Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979
November 2013

© Crown copyright 2013
Published November 2013
NSW Department of Planning & Infrastructure
www.planning.nsw.gov.au

Disclaimer:

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

1. BACKGROUND

1.1 Introduction

Toga Developments Pty Ltd (the proponent) has lodged a Section 75W application to amend an existing Concept Plan approval (MP09_0195 MOD 4). The modification seeks approval to:

1. raise the ground floor lobby entry level/ car park level of Building E by 0.5 metres;
2. permit the removal of five additional trees under the Tree Management Plan; and
3. remove a landscaping mound to allow remediation works.

The proposed modifications are consistent with the intent of the Concept Plan approval and there will be no loss of streetscape amenity or public benefit. It is therefore recommended that the proposed modification be approved.

1.2 The Site

The site lies within the Ryde local government area, approximately 14 km north-west of the Sydney CBD and 6 km north-west of the Chatswood CBD. The site is in close proximity to Macquarie University, the Macquarie Shopping Centre, the Macquarie University Railway Station, Epping Road and the Lane Cove National Park (see **Figures 1 and 2** below). The site comprises part of the existing Morling Theological College, and has a total area of 17,253m².

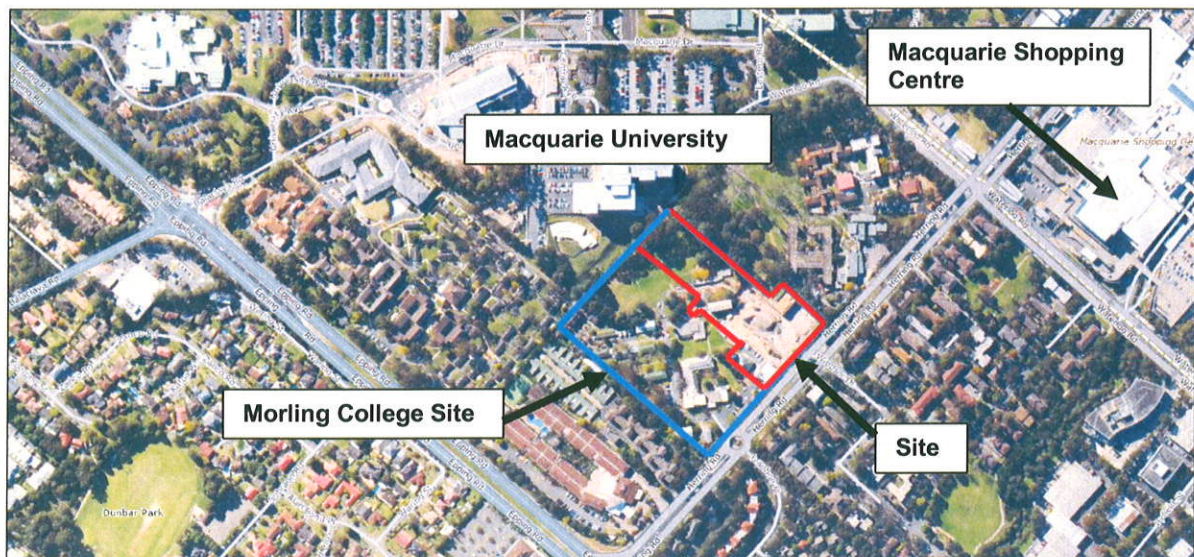


Figure 1: Site Location

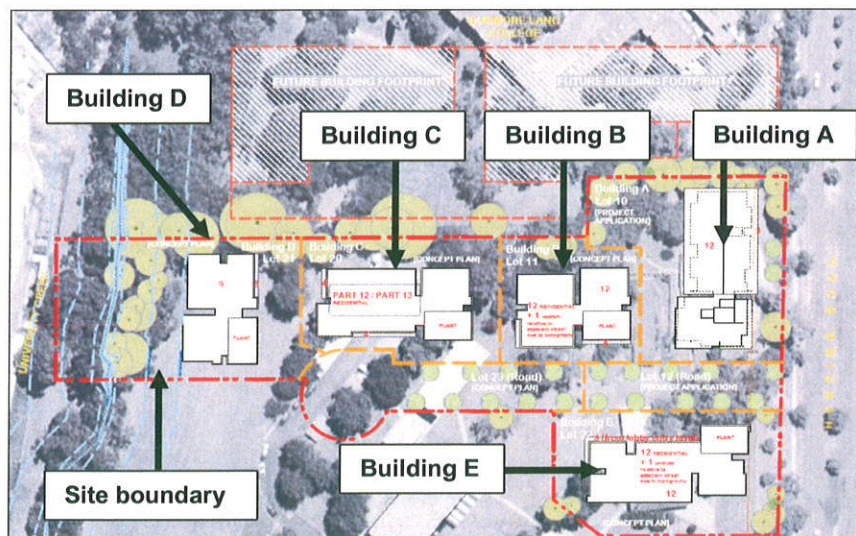


Figure 2: Site Context Plan Demonstrating the Layout of the 5 Buildings and Internal Road. Building E, the subject of the MOD 4 is located in the bottom right corner.

1.3 Approval History

On 20 January 2011, the then Deputy Director-General of Development Assessment and Systems Performance, approved a suite of applications in relation to the holistic redevelopment of the subject site. These included:

- A Concept Plan (MP09_0195) for a mixed use residential / retail development comprising 4x12 storey and 1x9 storey building envelopes with basement car parking, road works and landscaping;
- A Project Application (MP09_0217) for staged subdivision into 7 allotments, comprising 5 residential allotments and 2 road allotments for the access road; and
- A Project Application (MP09_0218) for the construction of a residential development including demolition and excavation; construction of a 12 storey residential / retail building (Building A) providing 10,367 sqm of GFA, 123 dwellings and a 96 sqm retail tenancy. The approval also includes a 3 level basement car park for 152 cars and ancillary services and facilities, and the construction of the south-eastern portion of the new local public access road, footpath and cycleway off Herring Road.

These approvals have been modified on various occasions. A summary of the modifications is provided at **Appendix A**.

On 13 December 2012, the Sydney East Region JRPP approved Development Application (LDA2012/0314) for the construction of Building E comprising a part 12 and part 13 story residential tower building with a total of 144 apartments. The proponent has submitted a Section 96 modification to Ryde Council consistent with the current requested modification of the Concept Plan. The Section 96 modification cannot be determined until the subject Section 75W modification request has been approved.

2. PROPOSED MODIFICATION

2.1 Modification Description

The application seeks to modify the approved Concept Plan to:

1. Raise the floor level of the lobby entry / car park level of Building E by 0.5 metres to accommodate overland flow. This would have the consequential effect of raising all the levels above ground floor. The increase in levels can be accommodated within the approved envelope and as such it is not proposed to increase the overall height of Building E;
2. Remove five trees (Nos 26 and 30-33 on the Tree Management Plan) to allow remediation works, accommodate a substation, and to address safety concerns. The five trees to be removed are proposed to be replaced by five trees of the same or another suitable species; and
3. Remove the asbestos currently located within the landscaping mound. It is proposed to remove the mound to allow remediation works. Additional landscaping is proposed to replace the mound to soften the appearance of the building within the streetscape.

With the exception of the proposed removal of Tree No. 26, adjacent to Building A, the modification request is confined to the levels of Building E and landscaping in its immediate vicinity.

This would require the following modifications to be made to the approved Concept Plan:

- **Condition A2** - Replacement of drawing A161 Urban Form Control Diagram Rev L with Rev M (Refer to **Figure 4** below);
- **Condition A2** - Replacement of drawing A162 Urban Form Control Diagram Elevation Along Herring Road Rev I with Revision J (Refer to **Figure 6** below); and
- **Condition A2** - Replacement of drawing LP-3 Tree Management Plan Rev E with Rev I (Refer to **Figure 7** below).

Figures 3, 4, 5, 6 and 7 provide a comparison between the approved Concept Plan and the proposed modification.

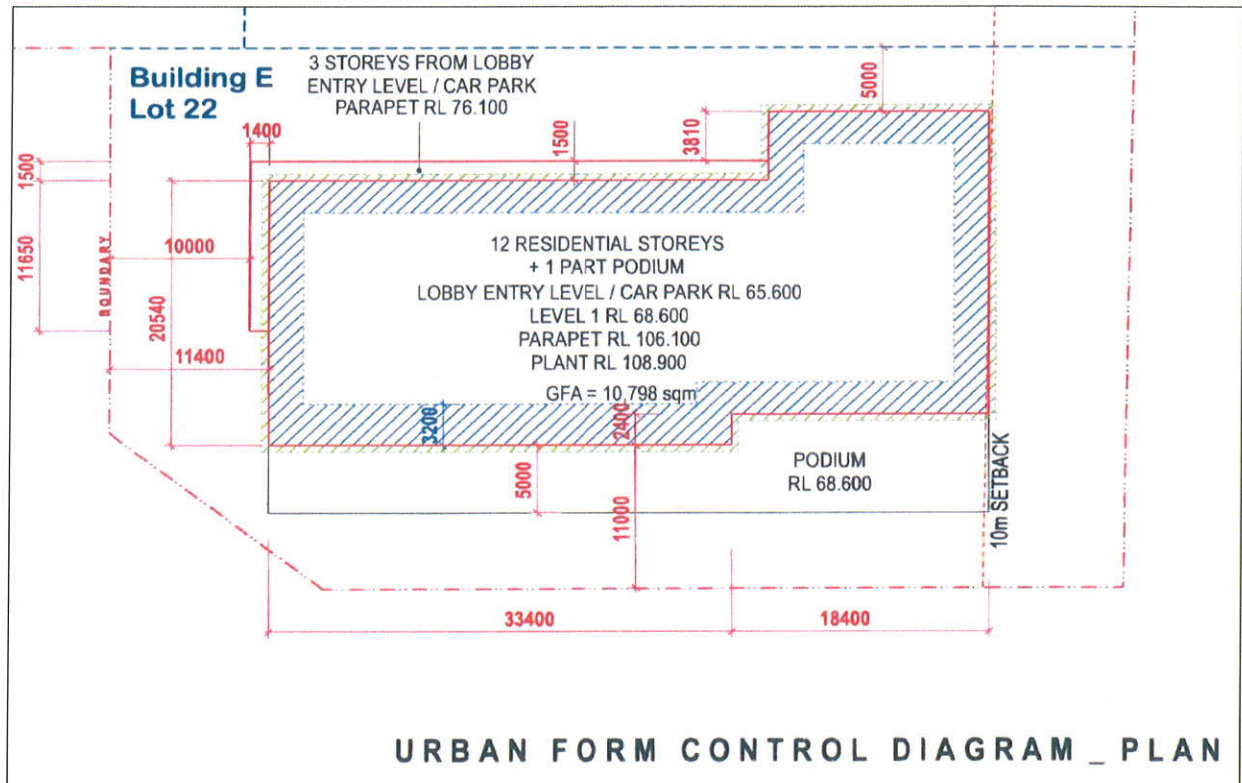


Figure 3: Approved Urban Form Control Diagram (Plan)

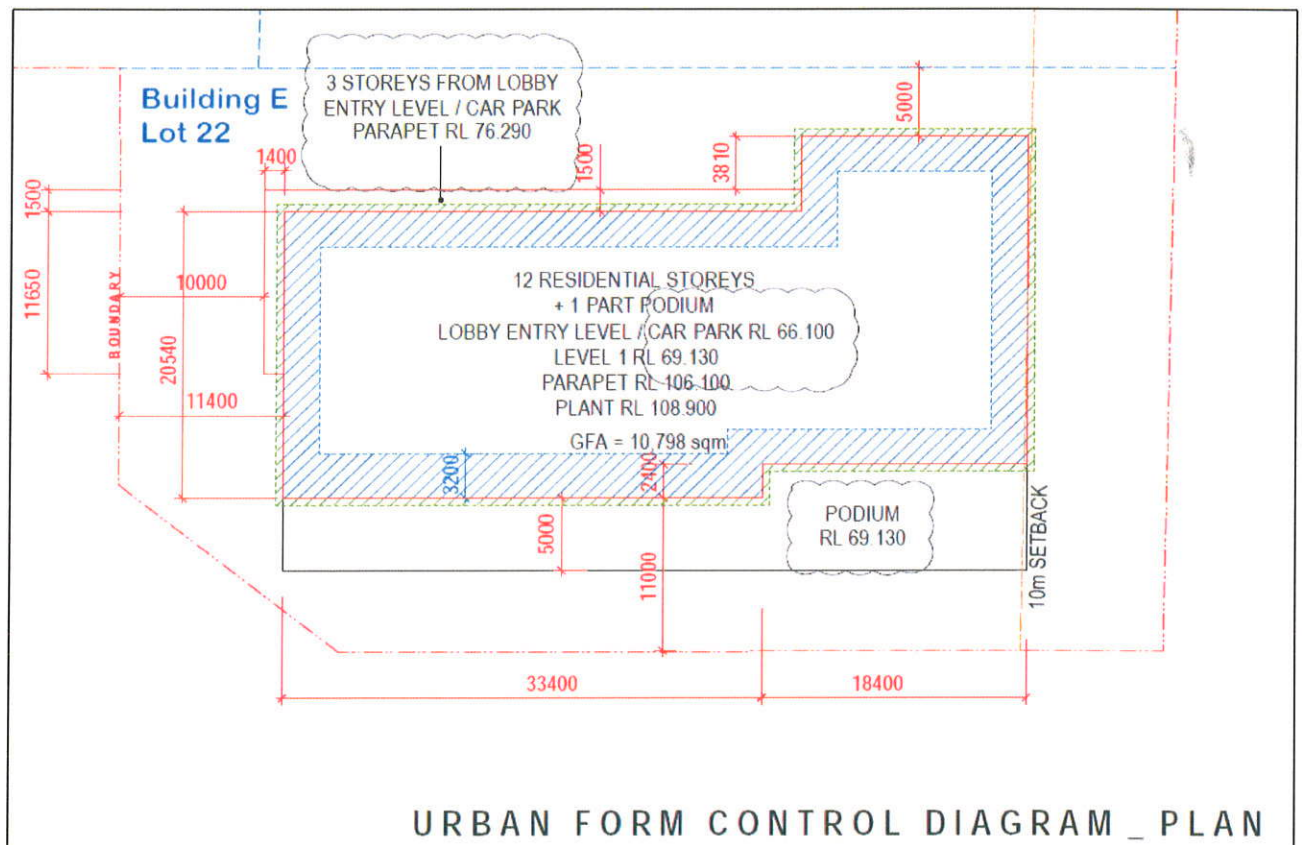


Figure 4: Proposed Urban Form Control Diagram (Plan)



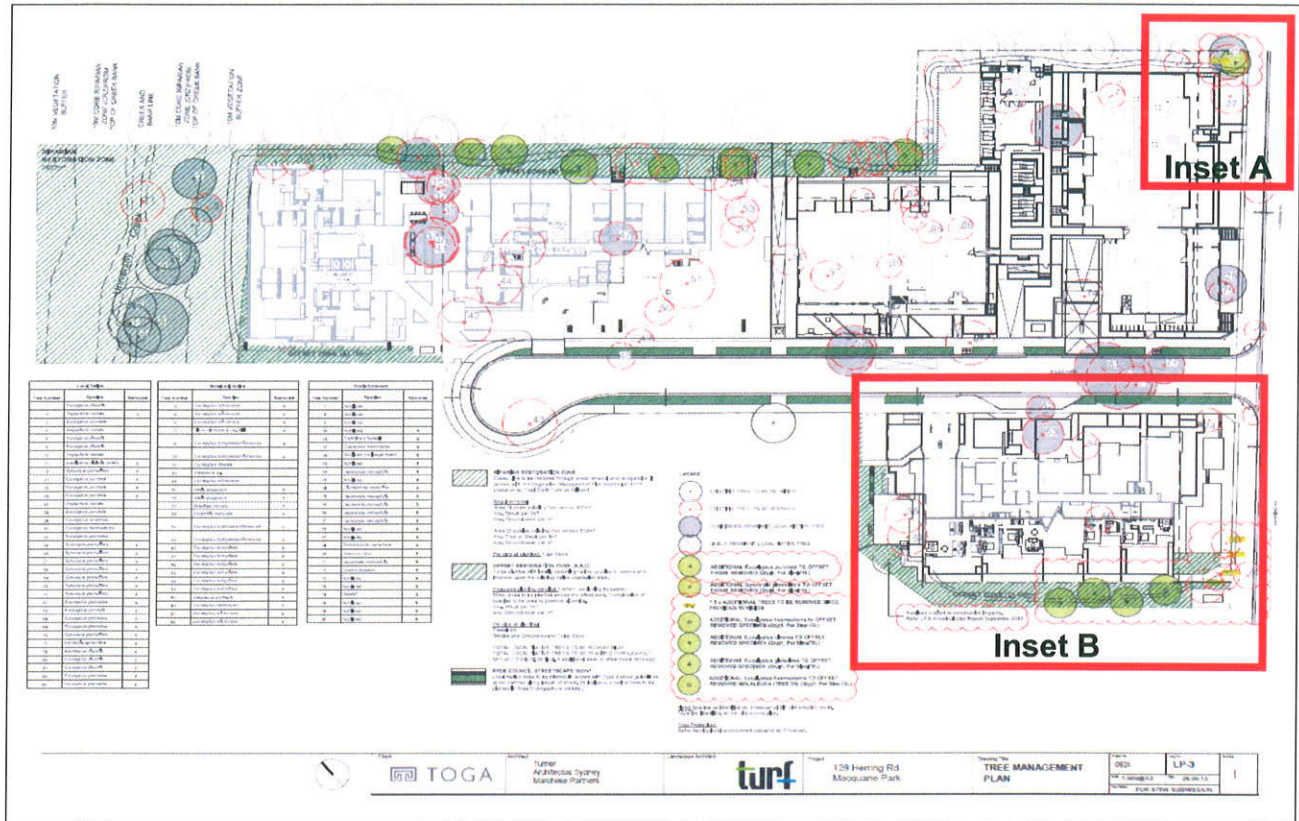


Figure 7: Additional Trees Proposed for Removal (see below for detail of red bordered insets)

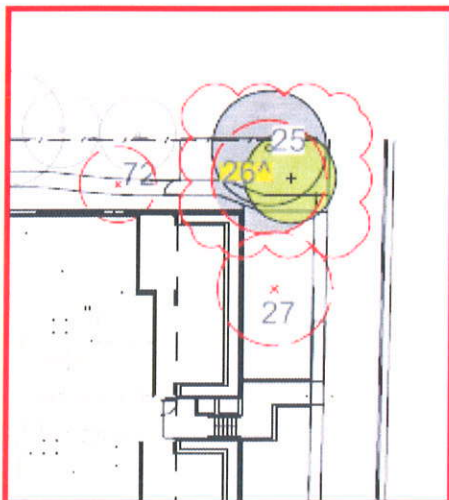


Figure 7 - Inset A

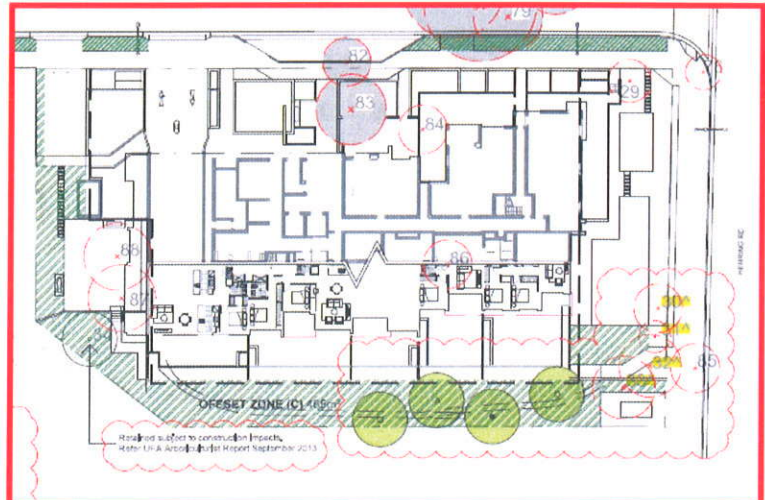


Figure 7 - Inset B

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 1979* (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 the associated regulations, and the Minister (or his delegate) may approve or disapprove the proposed modifications to the Concept Plan under Section 75W of the EP&A Act.

3.2 Modification of the Minister's Approval

Section 75W(2) of the EP&A 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 **Condition A2** to update the schedule of approved drawings, the modification will require the Minister's approval.

3.3 Environmental Assessment Requirements

Section 75W(3) of the EP&A Act provides the Director-General 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

Under the Minister's delegation of 14 September 2011, the Planning Assessment Commission (PAC) may determine the application as Toga Pty Ltd (the proponent) has lodged a political donations disclosure (Refer **Appendix C**).

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under section 75X(2)(f) of the EP&A Act and clause 8G of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation), the modification request was made publically available on the Department's website. The Department also notified Ryde City Council. Given the minor nature of the modifications the Department did not undertake any further notifications. Council has not responded to the Department's notification and no public submissions have been received.

5. ASSESSMENT

The Department considers the key environmental assessment issues associated with the proposal are:

- Raising the floor levels;
- Removal of the existing landscaped mound; and
- Tree Removal.

5.1 Raising floor levels

The modification seeks approval to raise the floor level of the lobby entry / car park level of Building E by 0.5 metres, from RL 65.6 to RL 66.1. The proposed modifications are necessary to address stormwater runoff associated with the increased level of the new internal road (LDA2012/114) and to provide the required 300 mm floor level clearance above the 1:100 flood level for stormwater runoff in accordance with the requirements of Ryde City Council.

Currently, the approved building falls from the footpath to the foyer and courtyard areas. Further investigation has identified that surface stormwater runoff from the road and footpath would likely cause local inundation or flooding of the building during a rainfall event. By raising the building floor level by 0.5 metres the courtyards could then be graded away from the building entry points so that surface water will not enter the building. The proposed floor level would also protect the building from potential flooding impacts even if the stormwater surface grates happen to become blocked during a rainfall event.

The relationship of the road, footpath and the proposed level of the building lobby is illustrated in **Figure 8**, below.

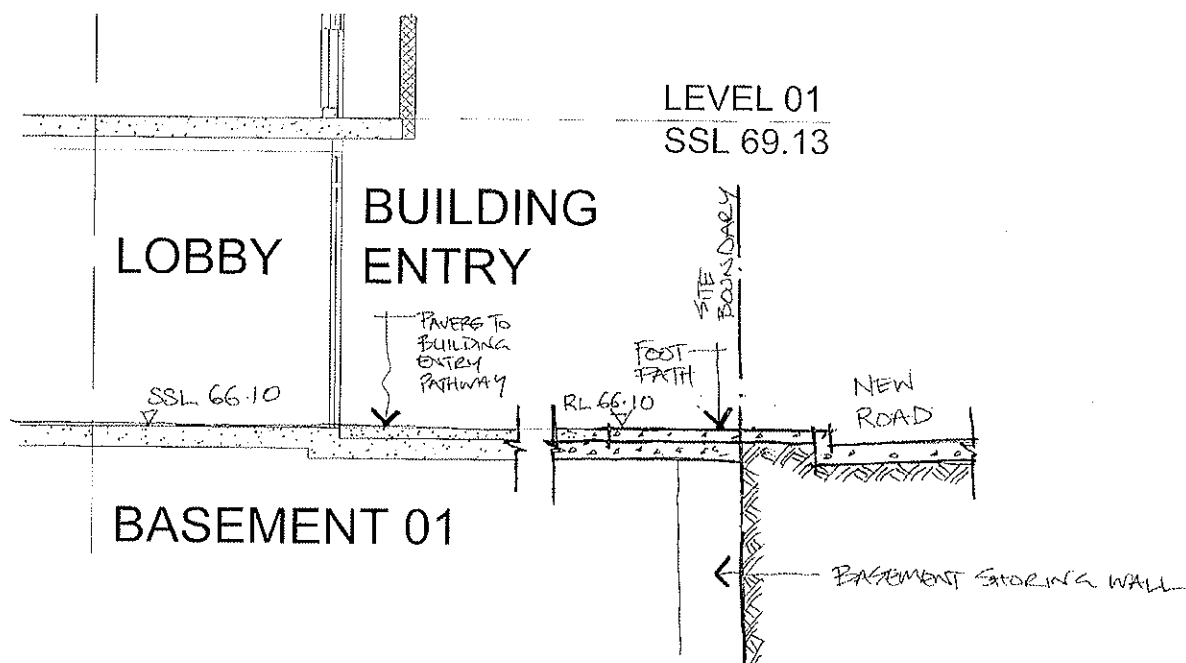


Figure 8: Relationship of road, footpath and proposed level of building lobby.

The approved (RL 65.60) and proposed lobby entry level (RL 66.10) for Building E is above the 1:100 flood clearance level. The proposed increase in the level of the lobby entry is therefore not driven by any flood levels associated with the creek.

The proposed increase in ground floor levels would not result in an increase in the approved maximum height of Building E, as the consequent increase in height to levels above would be accommodated within a redesigned roof space. The 0.5 metre increase in the ground level of the lobby entry level/car park level will result in the following changes to the levels of Building E:

Level Description	Approved level (RL)	Proposed level (RL)	Overall change
Lobby entry /car park level	65.60	66.10	0.5 metres
Level 1	68.60	69.13	0.53 metres
Three storeys from lobby entry/car park parapet	76.10	76.29	0.19 metres
Podium	68.60	69.13	0.53 metres

The proposed changes to the building levels would therefore only result in minor changes to the appearance of the development.

The Department supports the proposed increase to the lobby entry level and car park floor levels of Building E as it will address Council's overland flow floor level requirements. The proposed increase in floor levels will not result in changes to the approved envelope of Building E and would not have any perceptible impact on the approved height or bulk and scale of the building. Further,

The approved south-east elevation to Herring Road indicates that 50% of the street facade is dominated by a 3 metre high podium wall. The retained landscaped mound located in the area of setback from the boundary alignment with Herring Road softens the appearance of this wall and results in a satisfactory streetscape appearance. In the context of the retention of the existing mound, the 0.5 metres increase in podium wall height which would result from the proposed modification is minor and would still result in an acceptable streetscape presentation to Herring Road. The proposed removal of the existing landscaped mound is discussed further below.

The existing earth mound on the Herring Road elevation is contaminated with asbestos, and was recommended to be removed in the Phase 1 contamination investigation, exhibited with the Concept Plan. However, the existing earth mound assists in softening the streetscape appearance of Building E, as seen from Herring Road, and this is evident from the approved South East elevation depicted in **Figure 9**, below.



NSW Government
Department of Planning & Infrastructure



Figure 10: Proposed South East Elevation to Herring Road, showing additional landscaping to compensate for the removal of the mound.



Figure 11: Detail Section of the proposed elevation to Herring Road, showing additional landscaping to compensate for the removal of the mound. The landscaping within the red oval is 'screening' a 3-4 metres high blank expanse of wall.

Ryde City Council's Assessment Report for the construction of Building E (Ref: JRP No. 2012SYE089 – DA No. LDA 2012/0314) to the Sydney East Region Joint Regional Planning Panel indicates that the Urban Design Review Panel (UDRP) had concerns over the ground floor streetscape interface of the building with Herring Road that would result from "50% of the street facade being dominated by an approximately 3 m high wall to the car park." However, Council's report acknowledges that the UDRP had not considered the proponent's landscaping plans and that, "these plans show the retention of the mound within part of the front setback area". The report outlines that the existing earth mound, together with proposed landscaping would result in a satisfactory streetscape appearance, and that this is demonstrated by the proposed Herring Road elevation which accompanied the application to Council. This same Herring Road elevation is depicted in **Figure 9** of this report.

Figure 11 indicates that the additional landscaping to compensate for the proposed removal of the existing mound would serve to screen an otherwise blank expanse of podium wall on the Herring Road streetscape elevation. It is the Department's view that the approved streetscape presentation of Building E is superior to the modified Herring Road streetscape elevation, following the removal of the mound. Also, given that Council's report to the JRPP relied upon retention of the existing landscaped mound to mitigate the impacts to the Herring Road streetscape that would otherwise occur from blank expanse of a 3 metre high wall, it is the Department's view that reinstatement of the existing mound is considered necessary to achieve a satisfactory Herring Road streetscape interface.

It is acknowledged that the requirement to remediate the site and remove asbestos contamination from the existing earth mound is necessary. However, given the superior streetscape outcome which would result from retention of the mound, it is recommended that the mound be removed, remediated and reinstated.

Accordingly, a suitable condition has been incorporated into to the recommended modifying instrument to require the mound to be reinstated and landscaped, following remediation. Future development applications are required to address remediation of the mound in accordance with the Concept Plan approval.

5.4 Tree Removal

The application seeks approval to remove five additional trees and amend the Tree Management Plan. An arboricultural assessment was prepared by Urban Forestry Australia, which assessed the health of a number of trees required to be retained. The assessment provided advice on the removal of the additional trees and the appropriateness of the proposed replacement plantings and concluded that the subject trees should be removed on a number of grounds. This included safety reasons, the presence of soil contamination and the requirement for remediation, and that the trees were likely to be affected and deteriorate due to development impacts.

The subject trees and the basis for their removal are as follows:

- Trees 30 and 31 - are required to be removed due to the need to remediate the soil they sit within due to soil contamination and because of the proximity to the existing landscaped soil mound which is proposed to be excavated and removed;
- Tree 32 – required to be removed due to risk and safety issues. The arboricultural assessment indicates that this tree suffers from an extensive stem cavity and decay and should be removed due to the risk to property damage and personal injury should it collapse;
- Tree 33 – required to be removed to accommodate an electrical substation; and
- Tree 26 - adjacent to Building A is dead and required to be removed to address risk and safety issues. The Council has issued an approval to remove this tree prior to this application because it represented a risk to public safety.

The Tree Management Plan (**Refer to** Figure 7) has been amended to reflect those trees that are proposed to be removed as part of this Section 75W Modification and includes the planting of five additional offset trees as follows:

- 2 x *Eucalyptus haemastoma* (Scribbly Gum);
- 1 x *Eucalyptus cinerea* (Argyle apple or Silver Dollar tree);
- 1 x *Eucalyptus globoldea* (White Stringybark); and
- 1 x *Eucalyptus punctata* (Grey Gum).

The Department has reviewed the proponent's Arboricultural assessment and agrees that it is appropriate to remove the additional trees. The modified Tree Management Plan would result in a similar level of landscaping and streetscape appearance as approved. The identified basis for the removal of trees is considered to be reasonable and necessary. Accordingly, the Department recommends that **Condition A2** be amended to reflect the revisions to the approved Tree Management Plan.

6. CONCLUSION

The Department has considered the proposed modifications to the Concept Plan and the key issues associated with these modifications. Subject to the imposition of an additional condition requiring the existing earth mound on the Herring Road elevation of Building E to be removed, remediated and reinstated, the Department is satisfied that the proposed modifications are consistent with the Concept Plan approval, and will not create any adverse streetscape, environmental or amenity impacts.

It is therefore recommended that the modification application be approved, subject to conditions, as outlined in the recommended Modifying Instrument.

7. RECOMMENDATION

It is recommended that the Planning Assessment Commission, as delegate for the Minister for Planning and Infrastructure:

- (a) **Consider** the findings and recommendations of this report.
- (b) **Approve** the modifications under delegated authority, under Section 75W of the Environmental Planning and Assessment Act 1979.
- (c) **Sign** the attached instrument of Modification for MP09_0195 (MOD 4).

Endorsed by:

 29/11/13

Chris Ritchie
A/Director
Industry, Social Projects & Key Sites

 2.12.13

Chris Wilson
Executive Director
Development Assessment Systems & Approvals

APPENDIX A HISTORY OF APPLICATIONS

On 11 July 2011, the Director-General approved the following modification applications:

- **Concept Plan (MP09_0195) MOD 1** for alterations to the building envelopes and gross floor areas for buildings B, C, D and E in response to modification requirements of terms of approval B1 and B2;
- **Project Application (MP09_0217) MOD 1** for the addition of a notation for an access easement across proposed Lot 11 as required by conditions of approval and rectification of minor drafting errors; and
- **Project Application (MP09_0218 MOD 1)** for modifications to Building A to increase the number of units and gross floor area, modify the dwelling mix, and basement car park level and loading spaces, and minor façade changes.

On 13 March 2012, the Acting Director, Metropolitan and Regional Projects South approved the following modification applications:

- **Project Application (MP09_0217 MOD 2)** for modifications to the Project Approval to change the subdivision type from Torrens Title to Community Title Subdivision; and
- **Project Application (MP09_0218 MOD 2)** for modifications to the configuration of the basement levels of Building A.

On 23 March 2012, the Acting Director, Metropolitan and Regional Projects South approved the following modification application:

- **Concept Plan (MP09_0195 MOD 2)** for modifications to the Concept Plan approval relating to Building C to provide seven additional residential units, increase the building height to part 12 / part 13 stories and provide an additional part level of parking.

On 10 April 2012, the Acting Director, Metropolitan and Regional Projects South approved the following modification application:

- **Project Application (MP09_0218 MOD 3)** for modifications the approved dwelling mix, basement parking and storage and energy efficiency of clothes dryers of Building A.

On 1 November 2012, the Acting Director, Metropolitan and Regional Projects South approved the following modification application:

- **Concept Plan (MP09_0195 MOD 3)** for modifications to the Concept Plan approval to adjust ground floor levels, heights and extent of basements for buildings C and D, remove an additional eight trees across the site, and revise the Tree Management Plan.

On 21 December 2012, the Planning Assessment Commission approved the following modification application:

- **Project Application (MP09_0218 MOD 3)** for modification of the project approval to allow for removal of two trees from the area around Building A and to update the Tree Management Plan.

Development Applications LDA/2011/0578 (for Building B) and LDA/2012/0114 (for Building D) also relate to the site.

APPENDIX B MODIFICATION REQUEST

See the Department's website at
<http://majorprojects.planning.nsw.gov.au>

APPENDIX C POLITICAL DONATION DECLARATION

Political Donations Disclosure Statement to Minister or the Director-General

If you are required under section 147(3) of the Environmental Planning and Assessment Act 1979 to disclose any political donations (see Page 1 for details), please fill in this form and sign below.

Disclosure statement details				
Name of person making this disclosure MICHAEL GOVING	Planning application reference (e.g. DA number, planning application title or reference, property address or other description) M09-0195			
Your interest in the planning application (circle relevant option below)				
You are the APPLICANT	YES <input checked="" type="radio"/> NO <input type="radio"/> OR YES <input type="radio"/> NO <input checked="" type="radio"/>			
You are a PERSON MAKING A SUBMISSION IN RELATION TO AN APPLICATION				
Reportable political donations made by person making this declaration or by other relevant persons				
<p>* State below any reportable political donations you have made over the 'relevant period' (see glossary on page 2). If the donation was made by an entity (and not by you as an individual) include the Australian Business Number (ABN).</p> <p>* If you are the applicant of a relevant planning application state below any reportable political donations that you know, or ought reasonably to know, were made by any persons with a financial interest in the planning application, OR</p> <p>* If you are a person making a submission in relation to an application, state below any reportable political donations that you know, or ought reasonably to know, were made by an associate.</p>				
Name of donor (or ABN if an entity)	Donor's residential address or entity's registered address or other official office of the donor	Name of party or person for whose benefit the donation was made	Date donation made	Amount/ value of donation
TOGA P/L	PO BOX 1745 STRAWBERRY HILLS NSW 2012	LIBERAL PARTY OF AUSTRALIA.	8/12/2011	1,400
RACHEL ARGAMAN	AS ABOVE	CLP	3/9/2012	1,500
MICHAEL HERMAN	AS ABOVE	CLP	3/9/2012	1,600
PAUL CHAMBERLAIN	AS ABOVE	CLP	4/9/2012	3,000
Please list all reportable political donations—additional space is provided overleaf if required.				
By signing below, I/we hereby declare that all information contained within this statement is accurate at the time of signing.				
Signature(s) and Date Michael Goving 9/18/13				
Name(s) MICHAEL GOVING				

Cont...

Political Donations Disclosure Statement to Minister or the Director-General

Name of donor (or ABN if an entity)	Donor's residential address or entity's registered address or other official office of the donor	Name of party or person for whose benefit the donation was made	Date donation made	Amount/ value of donation
HELEN MOONEY	AS ABOVE	CLP	27/9/2012	1,500
TOGA P/L	AS ABOVE	ALP	10/4/2013	909.09
TOGA P/L	AS ABOVE	LIBERAL PARTY - AUS	14/5/2013	2,000
TOGA P/L	AS ABOVE	ALP	21/6/2013	5,000
TOGA P/L	AS ABOVE	CLP	7/8/2013	5,000
TOGA P/L	AS ABOVE	LIBERAL PARTY - AUS	7/8/2013	10,000
TOGA P/L	AS ABOVE	LIBERAL PARTY - AUS	7/8/2013	3,000
TOGA P/L	AS ABOVE	LIBERAL PARTY - AUS	19/8/2013	10,000

APPENDIX D RECOMMENDED MODIFYING INSTRUMENT
