

1 July 2014

Chris Wilson
Executive Director
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2000

Dear Mr Wilson

RE: 23 BENNELONG PARKWAY, WENTWORTH POINT – S75W Modification to Concept Plan MP09_0160

This letter has been prepared in support of an application to modify an approved Concept Plan pursuant to Section 75W and Clauses 2(1)(a) and 3(1) of Schedule 6A of the *Environmental Planning and Assessment Act, 1979*.

1.0 Background

On 22 June 2010, the Planning Assessment Commission approved Concept Plan MP09_0160 for a residential development, public open space, parking and road works at 23 Bennelong Parkway, Wentworth Point. The Concept Plan was subsequently modified on 22 December 2010 to add a four storey infill extension to Building C, other minor amendments and an increase in floor area to 45,500 square metres and reduction in landscaped area to 15,068 square metres.

The Concept Plan was again modified on 22 July 2013 (MOD 2) to increase the height of the approved building envelopes by one to two storeys, increase the floor area of the development by 4,545 square metres and increase car parking spaces by 21 spaces.

2.0 Proposed Modification

Part A – Table under Schedule 1 of the consent provides that the date of approval is liable to lapse:

5 years from the date of determination unless the development has been physically commenced.

As the date of determination was 22 June 2010, the date upon which the Concept Plan will lapse is 22 June 2015 unless works have physically commenced on site. In order to physically commence works on site, a Part 4 development application would need to be lodged with Auburn City Council, approved, and all relevant permits and post consent approvals gained in under 12 months from the date of this correspondence to allow works to physically commence on site. It is likely that this process would not be completed for a major development application in sufficient time to allow works to physically commence on site.

Notwithstanding the above, the site is currently leased by TNT Australia with the conclusion of the lease falling in August 2015. There is no capacity for the current land owner to terminate the lease at an earlier date or forcibly remove TNT Australia in order to commence works in the event that the above mentioned development consent could be obtained.

Accordingly, it is proposed to extend the lapsing date by 3 years and for Part A – Table under Schedule 1 of the consent is amended to states the following:

Date approval is liable to lapse:

~~5 years from the date of determination 22 June 2018~~ unless the development has been physically commenced

3.0 Assessment

In accordance with clause 3 of Schedule 6A of the Environmental Planning and Assessment Act 1979 (EP&A Act), Section 75W 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.

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.

Section 75(3) of the EP&A 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. Given the nature of the proposed modification to extend the lapsing date of the Concept Plan it is considered that new or amended DGRs are not required.

Section 75Y (Lapsing of approvals) of the EP&A Act provides that:

(1) An approval under this Part may be subject to a condition that it lapses on a specified date unless specified action with respect to the approval has been taken (such as the commencement of work on the project or the submission of an application for approval to carry out a project for which concept approval has been given).

(2) Any such condition may be modified under this Part to extend the lapsing period. The Minister is to review the approval before extending the lapsing period and may make other modifications to the approval (whether or not requested by the proponent) (bold added).

There are no specific tests in relation to extending of the lapsing period. Notwithstanding this, it is considered that this application has shown good cause for an extension of the lapsing date. In the absence of an extension, the Concept Plan will lapse which will unnecessarily frustrate the delivery of a significant contribution towards the increased housing targets identified in the Draft Metropolitan Strategy for Sydney 2031.

4.0 Conclusion

The proposed modification seeks a 3 year extension to the lapsing date which will provide sufficient time to ensure architects can be engaged to prepare high quality schemes consistent with the Concept Plan, other consultants can be engaged to assist in preparation of a development application, lodgement and approval of a development application, satisfaction of post consent conditions to allow release of a Construction Certificate, marketing of the project and pre-sales to achieve construction finance, and actual commencement of works to begin. The extension is in the public interest as it will assist in the delivery of a significant quantum of housing of the site which will contribute towards housing affordability in Sydney.

Yours faithfully



Aaron Sutherland
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