

24 June 2016

Natasha Harras
Team Leader, Modification Assessments
NSW Department of Planning & Environment
23-33 Bridge Street
SYDNEY NSW 2000

Dear Natasha,

Request for Amendment to Project Approval 09_0191 Marrickville Metro Shopping Centre

Further to recent discussions, this is a request to make minor modifications to a condition of the Project Approval MP 09_0191, made on behalf of AMP Capital (the Proponent).

The proposed modification seeks to amend condition B4.A which relates to the payment of monetary contributions by way of entering into a VPA.

Background

On 19 March 2012 the Planning Assessment Commission of New South Wales under delegation from the Minister for Planning approved a Concept Plan and Project Application MP09_0191 pertaining to 34 Victoria Road and 13-55 Edinburgh Road, Marrickville.

The development approved under MP09_0191 is summarised as follows:

- An extension of retail floor area at first floor level above the existing Marrickville Metro shopping centre building with further additional roof top parking above.
- Redevelopment of the existing industrial land south of Smidmore Street (13-55 Edinburgh Road) to create a two level free-standing retail addition to the shopping centre with car parking above.
- The retention of Smidmore Street between Edinburgh Road and Murray Street as a public road with street level retail activation.

Three modifications have been approved to the original approval, the most recent a minor MOD for wording changes to some conditions.

As part of the initial approval granted by the PAC, two specific conditions were imposed (with the agreement of the applicant) requiring that monetary contributions be paid towards community facilities and for the upgrading of local shopping strips. These conditions (now referenced as conditions B4.A and B4.B) required the entering into a Voluntary Planning Agreement with Council. Condition B4.A requires that the VPA be entered into prior to the issue of construction certificate for Stage 1A of the development.

Our client has been engaging with Council for some months to prepare this VPA as per the conditions of consent. Through more recent discussions with Council, it has become evident that it is Council's position that the VPA requirement could be removed and that such monetary contributions can be sought in the same manner as a section 94 contribution. Accordingly, our initial request submitted in

May 2016 (supported by Council in writing) was to remove the need for a VPA altogether and make monetary payments via conditions of consent.

However, as you aware, through our recent submission to the Department, your advice has been that the Department is at this time reluctant to accept a revised condition that seeks to impose a condition requiring contributions to be paid other than in accordance with a section 94 plan or via a VPA.

Proposed Modifications

Based on this recent advice from the Department, rather than remove the requirement for a VPA altogether, it is proposed to amend condition B4.A by deferring the need to enter the VPA until Stage 1B of the construction process. This is the first major stage of works for any substantive increase in floor area.

The proposed amendments to the wording are shown in **bold underline** and ~~strikethrough~~.

Voluntary Planning Agreement - Upgrade local shopping strips

B4.A ~~The proponent shall enter into a voluntary planning agreement with Marrickville~~ **Inner West** ~~Council for the purpose of upgrading local shopping strips within the Marrickville~~ **Inner West** ~~LGA in accordance with Council's Urban Centres Program.~~

This agreement shall be based on the following parameters:

- (a) A total monetary contribution of \$600,000.
- ~~(b) The first contribution of \$30,000 is to be paid prior to the issue of the Construction Certificate for Stage 1A of the development.~~
- ~~(eb) A \$270,000~~ **\$300,000** ~~contribution to be paid in three equal instalments over three consecutive years commencing from~~ **by** ~~the date of the issuing of the Construction Certificate for Stage 1B of the development.~~
- ~~(dc) The second \$300,000 contribution to be paid in equal instalments over three consecutive years commencing from the date of the issuing of the Construction Certificate from the date of the issuing of the Construction Certificate for Stage 2 of the development.~~
- ~~(ed) The contribution required made pursuant to the VPA is over and above any other contribution payable pursuant to this consent.~~

*Evidence of the execution of the VPA between both parties shall be provided to the Director General prior to issue of the Construction Certificate for Stage 4A **1B** of the development.*

Legislative Context

Schedule 6A of the EP&A Act came into effect on 1 October 2011 to provide for repealed provisions of Part 3A of the EP&A Act to continue to apply to certain projects that were approved or undetermined under Part 3A. These are all now known as "Transitional Part 3A Projects".

In accordance with clause 3 of Schedule 6A of the EP&A Act all of the provisions of Part 3A as in force immediately before its repeal continue to apply to Transitional Part 3A Projects. The provisions of section 75W of Part 3A prior to its repeal and as modified by Schedule 6A, state that "the Proponent may request the Minister to modify the Minister's approval of a project."

Under s.75W(1) 'modification of approval' means "*changing the terms of a Minister's approval, including:*

- (a) *revoking or varying a condition of the approval or imposing an additional condition of the approval, and*
- (b) *changing the terms of any determination made by the Minister under Division 3 in connection with the approval.”*

The approval MP09_0191 is a Transitional Part 3A Project to which Schedule 6A of the EP&A Act applies. The proposed amendments to the conditions of approval can therefore be considered under s.75W of the EP&A Act as in force immediately before the repeal of Part 3A.

The Impacts of the Proposed Amendments

The proposed amendment is considered minor and does not materially change the intent or outcome of the condition. The proposed amendment defers the first payment of \$30,000 to Stage 1B of the project which is the first major stage of works. Stage 1A involves minor works and landscape upgrades to the Civic Place Precinct fronting Victoria Road. These works when considered in isolation were not of relevance when this condition requiring a monetary contribution to the local strips was contemplated. Given the small quantum of the contribution and the nature of the works proposed this is considered a reasonable approach in the circumstances.

To offset the deferral of the of the first instalment for Stage 1A works, it is proposed to amend the condition to require that the \$300,000 for Stage 1B works is paid in one instalment prior to the issue of the construction certificate for this stage. This has the effect of bringing forward the more substantive monetary contributions compared to the current condition of consent.

This matter has been previously discussed with Council when it was agreed that the best pathway was to remove the VPA altogether and make such payments via conditions of consent. A letter endorsing this initial approach is provided for information. While this recent change of approach has not been directly discussed with Council at the time of submission, our client is willing to work with Council and the Department to achieve an outcome acceptable to all parties. Our primary concern is to ensure that the matter can be resolved expeditiously to allow the commencement of works.

Conclusion

Having regard to the above, we submit that the proposed modifications are of a minor nature and will not have any adverse environmental impact.

Yours sincerely,



Tim Blythe
Director

Enc: Endorsed Letter from Council signed 25th May 2016.