

07380

2 December 2008

Director-General
Department of Planning
GPO Box 39
SYDNEY NSW 2000

Attention: Chris Wilson

Dear Chris

MODIFICATION TO MP 05_0032 CONCEPT PLAN APPROVAL FOR CATTLE BAY, EDEN

I refer to the abovementioned Concept Plan Approval for Cattle Bay, Eden and our discussions with Departmental officers about some minor anomalies in the Notice of Determination.

We are writing on behalf of the applicant, Eden Resort Hotel Pty Ltd, to request the Minister to modify the Concept Plan Approval MP 05_0032 under Section 75W of the Environmental Planning and Assessment Act 1979 as described below to correct a number of anomalies.

1.0 MINISTER'S DETERMINATION OF FUTURE DEVELOPMENT IN PRECINCT A – DEMOLITION OF EXISTING BUILDINGS AND SITE REMEDIATION

The Minister's determination of the Concept Plan Approval (MP 03_0032) includes a statement in part (e) stating that future development for Precinct A is to be subject to Part 3A of the EP&A Act. We understand that the intent of this part of the determination is for the detailed design and construction of the tourist facilities in Precinct A (comprising hotel, serviced apartments and function centre/ restaurant) are to be subject to the approval of the Minister under Part 3A.

The applicant is proposing to carry out the demolition of existing building structures and some site remediation in Precinct A in the near future. This has become necessary as the site security firm has advised the applicant that existing building structures on the site are being vandalised and may eventually pose a hazard to those trespassing on the site.

We suggest that the demolition of existing buildings and site remediation in Precinct A are not matters of State significance, and are more appropriately subject to the approval of Bega Valley Council under Part 4 of the EP&A Act. Therefore, we request that the Minister modify part (e) of the determination to read as follows with additions underlined:

"e) pursuant to Section 75P(1)(a) that future development for Precinct A be subject to Part 3A of the Act (other than building demolition and site remediation works that are not listed as a Part 3A project in the SEPP Major Projects 2005)."

2.0 DESCRIPTION OF SUBJECT LAND IN SCHEDULE 1

The description of the subject land in Schedule 1 of the Concept Plan Approval includes two lots (Lot 23 Sec20 DP 758379 and Lot 1 DP 651 960) which were not included in our specific advice in submissions sent to you on the site details, and must have been included in error. We request these two lots be deleted from the description of the subject land in Schedule 1 of the Approval.

3.0 CONDITION A1(7) - STAGING OF LANDSCAPING AND PROVISION OF PUBLIC ACCESS TO THE FORESHORE

The applicant is committed to the landscaping and provision of public access to the foreshore as part of the construction of any of the tourist facility buildings in Precinct A (ie. (comprising hotel, serviced apartments and function centre/ restaurant) which are shown as Stages 1 and 2 on the Indicative Staging Plan, and is seeking to have this commitment included in the Concept Plan Approval in a clear and practical way.

At present, the terms of the Concept Plan Approval relating to the staging of the landscaping and provision of public access to the foreshore are ambiguous and impractical.

Condition A1(7) of the Concept Plan Approval states the following:

“(7) Staging – provision of pedestrian access to the foreshore and the upgrade and landscaping of waterfront areas for public access as part of any Stage 1, generally in accordance with the Construction Staging – Indicative (Drawing B.1.11 dated 2 August 2007)”.

The definition of Stage 1 in the Concept Plan Approval (Schedule 1) is as follows:

“Stage 1: Demolish existing waterfront building and construct new conference building and associated parking. Upgrade waterfront areas for public use. Upgrade Chandos Street with new roundabout.”

Condition A1(7) is ambiguous in what is meant by the term *“any Stage 1”*. It is seemingly impractical in requiring any development such as building demolition or site remediation to also landscape the foreshore and provide public access to the foreshore. It would also be unreasonable and impractical if the intent of the condition is to require any development of the Residential Precincts B to F as the first stage of development under the Concept Plan to also landscape the foreshore and provide public access to the foreshore.

We propose that Condition A1(7) in the Concept Plan Approval be modified as described further below to clarify and confirm the applicant’s commitment to the landscaping and provision of public access to the foreshore as part of the construction of any tourist facility building in Precinct A (Stages 1 and 2). This is a reasonable and practical way to deliver the foreshore to the public.

We suggest that it would be unreasonable and impractical to require a building demolition or site remediation stage of development to also landscape and provide public access to the foreshore. Precinct A would still remain a potential hazard fenced off with security to prevent public access until the construction and occupation of the tourist facility buildings. This would restrict public access to the foreshore for public safety.

We suggest that it would also be unreasonable and impractical to require a developer in any of the Residential Precincts B to F to landscape and provide public access to the foreshore for the following obvious reasons:

- the residential precincts are located hundreds of metres away from the foreshore, and the foreshore does not relate directly to the individual residential sites within these precincts;
- the developers of land in the residential precincts are not likely to own or control the foreshore which is part of the title and ownership of Precinct A;
- Precinct A is a potential hazard that is fenced off with security to prevent public access until the construction and occupation of the tourist facility buildings. This restricts public access to the foreshore for public safety reasons.
- Any requirement imposed on the developer of a residential building such as a house or town house to landscape the whole foreshore at Cattle Bay would be clearly excessive and out of proportion with the scale and affordability of the residential project.

Given the above, we request that the Minister modify Condition A1(7) in the Concept Plan Approval to deliver the foreshore to the public in a clear and practical way as shown below with deletions struckthrough and additions underlined:

“(7) Staging – provision of pedestrian access to the foreshore and the upgrade and landscaping of waterfront areas for public access as part of any Stage 1 or Stage 2 (whichever occurs first) generally in accordance with the Construction Staging – Indicative (Drawing B.1.11 dated 2 August 2007)”.

We also request that the definition of Stage 1 in the Concept Plan Approval (Schedule 1) be reworded as follows with deletions struckthrough and additions underlined:

“Stage 1: ~~Demolish existing waterfront building and~~ Construct new conference building and associated parking. Upgrade waterfront areas for public use. Upgrade Chandos Street with new roundabout.”

4.0 CONDITION C1(1) – GFA AND HEIGHT

Condition C1(1) includes a table that specifies the maximum GFA, height in metres, and height in storeys for buildings in Precincts A to F.

The table specifies a maximum height of 2-3 storeys and 7.5m for both Precincts E1 and E2. The specification for a 7.5m height in these precincts is in error as the 3 storey component is 10m as shown on the approved height plans.

We request that the table in Condition C1(1) be modified to state that the maximum height in metres is “7.5m for two storeys and 10m for 3 storeys”.

5.0 CONDITION C1(2) – FSR LIMIT IN PRECINCT F

Condition C1(2) places an FSR limit of 0.5:1 in Precincts B, E1, F1 and F2 on the site. The reasoning for this condition is given in Section 3.8.11 of the Director-General’s Environmental Assessment Report which states the following:

*“The LEP also provides for an FSR control for single dwellings and multi-unit dwellings of 0.5:1. **The EA indicates that the future buildings will comply.** However, as there is not formal subdivision approval as part of this assessment, it is uncertain as to the final site areas of each future development lot. The FSR should be based on the site area of the relevant DA for each individual building, which may not necessarily correspond with the Precinct areas described in the project. A condition is recommended limiting future buildings to FSR 0.5:1.”*

(our emphasis in bold)

(EA means the Environmental Assessment Report prepared by JBA dated November 2007.)

The above reasoning for the imposition of Condition C1(2) is based on an incorrect interpretation of the EA in relation to Precinct F. The EA notes that the Concept Plan has an overall FSR of 0.39:1 across the whole site which complies with the maximum 0.5:1 applying to the zone under the Bega Valley LEP. However, it is also clear in the EA that Table 7 – Proposed floor space and FSR in Section 4.4 (page 22) sets out the FSR for precincts including an FSR of 0.57:1 for Precinct F. **The statement quoted above from the D-G’s report “The EA indicates that the future buildings will comply” that is used as a basis for Condition C1(2) is incorrect in relation to Precinct F.**

The approved Concept Plan for Cattle Bay is based on an urban design approach involving site analysis and masterplanning that:

- conserves areas of high ecological value and high scenic value by managing and precluding development in those areas; and

- focuses development on those parts of the site that are cleared, disturbed, and relatively low in conservation value and scenic value, at an appropriate scale and density based on the context and capacity of the site.

The urban design approach used in the approved Concept Plan for Cattle Bay is a more ecologically sustainable approach and is in contrast to the blanket 2(e) Urban Zone and 0.5:1 FSR applying across the whole site under the Bega Valley LEP. In this approach, the FSR limit of 0.5:1 in the Bega Valley LEP is a guide that forms part of the context of the site and is considered together with the capacity of the land to set an appropriate scale and density of development in each precinct. This approach, by definition, results in some areas being conserved with no development or FSR, other precincts having FSR less than 0.5:1, and other precincts having an FSR slightly more than 0.5:1 (in this case Precinct F having an FSR of 0.57:1). **The urban design approach used in the Concept Plan supersedes the blanket FSR limit of 0.5:1 in Bega Valley LEP.**

The suggestion in the above reasoning from the Director-General's report and in Condition C1(2) that the FSR limit of 0.5:1 in Bega Valley LEP should apply to each precinct in Cattle Bay contradicts the fundamental concept and urban design approach used in the Concept Plan for Cattle Bay.

Given the circumstances above, we request that the Minister modify Condition C1(2) by replacing the FSR limit of 0.5:1 with an FSR limit of 0.57:1 in Precincts F1 and F2. This is justified on the following grounds:

- The reasoning for Condition C1(2) in the Director-General's report that all buildings in the EA will comply with an FSR of 0.5:1 is incorrect in relation to Precinct F.
- The urban design approach used in the Concept Plan involving site analysis and masterplanning supersedes the blanket FSR limit of 0.5:1 in the Bega Valley LEP.
- Precinct F has the capacity to accommodate an FSR of 0.57:1 as demonstrated in the EA, particularly in relation to the following points.
 - The type and scale of housing (3 storey flat buildings) proposed in Precinct F is consistent with the context of the adjacent town centre and urban zone.
 - The visual impact of buildings in Precinct F on the scenic landscape as viewed from Twofold Bay will be relatively minor as the precinct is largely hidden behind a ridge.
 - The vegetation on the street frontage in Precinct F where building footprints are to be located has been largely cleared in the past and is of limited conservation value.
 - The road network with the committed improvements can accommodate the floor space proposed in Precinct F.

6.0 CONDITION C2 – SEPP 65

We request that Condition C2 be modified as shown below with additions underlined in order to clarify that SEPP 65 applies only to residential flat buildings which are in Precincts E1 and F2, and does not apply to the hotel, serviced apartments, townhouses, dwelling houses or function centre in the other precincts (to which SEPP 65 is not appropriate to apply).

“(1) Future applications for all residential flat buildings in Precincts E1 and F2 must include an assessment against State Environmental Planning Policy No.65 – Residential Flat Buildings. All these residential flat buildings must demonstrate compliance with SEPP 65. For the purpose of this clause, residential flat building is defined in SEPP 65.”

7.0 PLANNING AND ENVIRONMENTAL ASSESSMENT ISSUES

The proposed modifications are corrections of anomalies that do not raise any additional environmental planning assessment issues to that already provided in the EA. These modifications do not warrant any further advertising, notification or exhibition for public comment.

We trust this request for a modification contains all the necessary information and can be processed promptly to correct the anomalies in the Concept Plan Approval. If you have any queries or would like to discuss this matter further, please do not hesitate to contact me on Ph.9409 4914 or awilson@jbaplanning.com.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Andrew Wilson', is displayed on a light gray rectangular background.

Andrew Wilson
Associate