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26<sup>th</sup> March 2019

David Glasgow  
Department of Planning and Environment  
320 Pitt Street  
Sydney, NSW 2000

Dear David,

## **MARRICKVILLE METRO SHOPPING CENTRE - MODIFICATION APPLICATION (MP09\_0191 MOD7)**

### **1. INTRODUCTION**

This letter seeks a Section 75W modification request pursuant to Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (Savings and Transitional Regulation), made on behalf of AMP Capital Investors (AMP) to modify the Major Project Approval MP09\_0190 for Marrickville Metro Shopping Centre, at 34 Victoria Road, Marrickville.

Under the Savings and Transitional Regulation, a concept plan may continue to be modified under Section 75W in certain circumstances.

Clause 3BA (5) of Schedule 2 provides that:

*A concept plan may continue to be modified under section 75W pursuant to a request lodged on or after the cut-off date (whether or not the project is or has ceased to be a transitional Part 3A project), but only if the Minister is satisfied that:*

- (a) the proposed modification is to correct a minor error, misdescription or miscalculation, or*
- (b) the proposed modification is of minimal environmental impact, or*
- (c) the project to which the concept plan as modified relates is substantially the same as the project to which the concept plan currently relates (including any modifications previously made under section 75W).*

In this case, it is considered that the proposed modification is of minimal environmental impact. The modification will be MOD7 to MP09\_0191 and seeks to amend the following conditions:

- Condition B6 relating to payment of deposit to Council during the construction phase;
- Condition B7 relating to the payment of a bond for during the construction phase; and
- Condition D1 relating to construction hours.

## 2. SITE AND SURROUNDING CONTEXT

The subject site is located at 34 Victoria Road and 13-55 Edinburgh Road, Marrickville, NSW 2204.

Marrickville Metro is a subregional shopping centre, located approximately 7km south west of the Sydney Central Business District and approximately 2.5km from Marrickville Railway Station, 1km from St Peters Railway Station and 1.5km north of Sydenham Railway Station. Several bus routes pass along Victoria Road and Smidmore street and connect to other local centres and railway stations.

It comprises two parcels of land being 34 Victoria Road (the existing Marrickville Metro shopping Centre site) and 13-55 Edinburgh Road (the shopping centre expansion site). The existing shopping centre consists of the major tenants of Kmart, Woolworths and Aldi and a range of speciality stores, with roof-top car parking. The shopping centre is the largest retail centre in the local area.

The shopping centre is a substantially enclosed and internalised with pedestrian entries from Victoria Road to the north and Smidmore Street to the south. Pedestrian access is also provided from the rooftop car parking areas down into the centre.

A Major Project Approval has been granted for an extension to the shopping centre to be sited on the opposite side of Smidmore Street to the south of the existing centre, and demolition works have commenced at this site to facilitate its development. Further details of the consents are set out below.

Figure 1 – Aerial view of the site.



Source: Six Maps

### 3. DEVELOPMENT BACKGROUND

The existing shopping centre and expansion site is subject to a Major Project Approval (MP09\_0191), which was granted on 19<sup>th</sup> March 2012. This was a concept plan approval approved the expansion of the Marrickville Metro Shopping Centre at the subject site. The concept approval was approved at project detail, subject to conditions. No further environmental assessment requirements were imposed pursuant to the former Section 75P(1)(c) of the *Environmental Planning and Assessment Act* 1979.

The Major Project Approval has been modified several times. The most recent modification (MOD 6) was granted in October 2018. A summary of the primary consent and subsequent modifications are set out in Table 1 below.

Table 1 – Major Project Approval and Modification History

Approval Date	Reference	Description of Works
19 <sup>th</sup> March 2012	MP09_0191	Extension to the existing Marrickville Metro Shopping Centre to include an additional level of retail floor space with an additional level of parking above. The construction of a new building comprising two levels of retail with two levels of parking above, at site of 13-55 Edinburgh Road.
16 <sup>th</sup> April 2013	MP09_0191_MOD1	Internal and external amendments to the Stage 1 site at 13-55 Edinburgh Road and a reduction in car parking numbers.
23 <sup>rd</sup> April 2015	MP09_0191_MOD2	Proposal to split Stage 1 into two stages (Stage 1A and Stage 1 B). Stage 1A comprises works to the main entry of the Shopping Centre at Victoria Road, traffic management works and geotechnical works on the Edinburgh Road site. Stage 1B comprises the new Shopping Centre building on the 13-55 Edinburgh Road site
11 <sup>th</sup> February 2016	MP09_0191_MOD3	Amend Conditions B17 and E22.A relating to traffic requirements and Condition D28 relating to tree management.
N/A	MP09_0191_MOD4	MOD4 did not proceed.

Approval Date	Reference	Description of Works
27 <sup>th</sup> July 2016	MP09_0191_MOD5	Changes to Condition B4. A by deferring the timing of execution of a Voluntary Planning Agreement with Inner West Council.
31 <sup>st</sup> October 2018	MP09_0191_MOD6	Design amendments including retention of the brick façade, a new pedestrian bridge linking the two parts of the centre, amended road alignment for Smidmore Street, clarification that the expansion site contains retail premises and business premises, and redistribution of GFA across the site without increasing overall GFA.

## 4. PROPOSED MODIFICATIONS

Proposed modification to the Major Project Approval conditions are outlined below. Text proposed to be deleted is indicated by 'strike through' and text proposed to be added is indicated by **bold red text**.

### Protection of Council's infrastructure

#### Condition B6

Payment to Council of **\$86,700.00** prior to the issue of the Construction Certificate for Stage 1A as a Building Security Deposit (B.S.D.) to provide security against damage to Council's infrastructure. The B.S.D. may be held by Council until all construction **of Stage 1A** under this approval has been completed and Council may utilise part or all of the B.S.D. to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations. **The Council shall return the B.S.D. payment to the applicant following completion of Stage 1A. The payment shall then be made again to Council prior to issue of a Construction Certificate for the road works for Stage 1B and prior to issue of a Construction Certificate for Stage 2. The B.S.D payment shall be returned to the applicant following completion of each of these individual stages.**

#### Condition B7

Payment of a Bond, in the sum of **\$ 380,000.00** for the proper performance of road, drainage, traffic management and public utility adjustment works (public domain works) prior to the issue of the Construction Certificate for Stage 1B **and shall be returned to the applicant following completion of Stage 1B. The payment shall then be made again prior to issue of a Construction Certificate for Stage 2 and returned following completion of those works.**

- a) The security may be provided in one of the following methods:
  - I. in full in the form of a cash bond supported by a legal agreement prepared by
- b) Council's Solicitors at the proponent's expense; or by provision of a Bank Guarantee by an Australian Bank in the following terms:

- II. the bank must unconditionally pay the guaranteed sum to the Council if the Council so demands in writing.
- III. the bank must pay the guaranteed sum within seven (7) days of demand without reference to the proponent or landowner or other person who provided the guarantee, and without regard to any dispute, controversy, issue or other matter relating to consent or the carrying out of development in accordance with the consent;
- IV. the bank's obligations are discharged when payment to the Council is made in accordance with this guarantee or when the Council notifies the bank in writing that the guarantee is no longer required.

#### Justification

The amendments to the wording of these conditions seek to permit the repayment of the Building Security Deposit and Bond back to the developer/contractor at an appropriate point when works have been completed, given the staging of the development that is proposed.

The repayment of both the Building Security Deposit and Bond and is currently tied to the completion of all construction works, but the consent is staged into three phases, Stage 1A, 1B and 2. Stage 1A is now complete and the contractor is seeking return of the deposit, given the works are complete and a different contractor is appointed for the Stage 1B works.

Furthermore, there is a requirement under the Statement of Commitments (No.17) that requires a minimum period of three years between the commencement of operations on Stage 1B of the project and the commencement of operations of Stage 2. It would therefore be unreasonable to have the deposit and bond held by Council/bank for three years, whilst development works cannot be undertaken.

As such, the revised wording of the Conditions seek flexibility to reasonably allow the payments to be made by and returned to the applicant between the stages of development.

## **Hours of Work**

### **Condition D1**

**Unless otherwise agreed in writing with Council,** all demolition, construction and associated work necessary for the carrying out of the development is restricted to:

- I. between the hours of 7.00 am to 5.30 pm Mondays to Fridays and 8:00am to 1:00pm, Saturdays for works on the Victoria Road site; and
- II. between the hours of 7.00 am to 5.30 pm Mondays to Saturdays, for works on the Edinburgh Road site.
- III. Notwithstanding the above, no work is to be carried out on any Sunday, Public Holiday or any Saturday that falls adjacent to a Public Holiday

#### Justification

The flexibility is sought with the wording of this Condition to give Council the power to amend the hours of construction in circumstances where the developer is seeking temporary out of hours construction works, which may be required from time to time. At present, any amendments to the hours of construction would require a further MOD application being lodged with the Department of Planning, which is not a sensible or time-efficient process to achieve this variation.

## **5. PLANNING ASSESSMENT**

The following environmental assessment addresses the relevant matters pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

### **5.1. MARRICKVILLE LOCAL ENVIRONMENTAL PLAN 2011**

The Marrickville Local Environmental Plan 2011 (MLEP) is the principal environmental planning instrument that applies to the site. The proposed amendments relate to modification of conditions and do not change the approved use or design of the built form at the site, which was granted through a Major Project Approval. Given this, the proposal is consistent with Marrickville LEP 2011.

### **5.2. MARRICKVILLE DEVELOPMENT CONTROL PLAN 2013**

The Marrickville Development Control Plan contains comprehensive controls for the subject site. The proposed modification is principally administrative and would therefore not adversely impact any relevant DCP provisions.

## **6. POTENTIAL ENVIRONMENTAL IMPACTS**

The proposed modification to the wording of the conditions are considered to cause minimal environmental impacts. The proposal exclusively relates to administration conditions and does not propose changes to the use or built form of the Major Project Approval (MP09\_0191) and subsequent Modifications. Therefore, the proposed modification is considered minor in nature and acceptable for approval.

## **7. CONCLUSION**

This MOD application can be progressed under the Savings and Transitional Regulation, as a concept plan may continue to be modified under section 75W application where the proposal is of minimal environmental impact, as identified under Clause 3BA (5) of Schedule 2 of those Regulations.

The amendments to the wording of the conditions are generally administrative, fully justified and will enable the efficient development and operation of Marrickville Metro Shopping Centre. The amendments will result in minimal environmental impacts at the centre or within the surrounding locality.

It is therefore requested that consent is granted for this modification to Major Project Approval MP09\_0191.

If you have any queries in regard to this application, please feel free to contact me on 02 8233 9901 or by e-mail at [nwheeler@urbis.com.au](mailto:nwheeler@urbis.com.au).



Yours sincerely,

A handwritten signature in black ink, appearing to read "Nik Wheeler", with a long, sweeping horizontal line extending to the right.

Nik Wheeler