



63-77 West Parade, West Ryde

*Modification of
Concept Approval
(MP09_0029 MOD 3)*



May 2019

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Cover photo

An aerial view of the site (Source: Proponent's Planning Report for MP 09_0029 MOD 2)

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1. Introduction

1.1 Preamble

This report provides an assessment of a section 75W request to modify the concept approval (MP 09_0029) for a residential development at 63-77 West Parade, West Ryde.

NSW Land and Housing Corporation (the Proponent) seeks to modify the concept approval (Condition A5) to prevent the approval lapsing on 18 June 2020 by lodging a development application, instead of physically commencing works.

1.2 Site and surroundings

The site is located approximately 16 kilometres northwest of the Sydney central business district, immediately north of the West Ryde Town Centre, within the City of Ryde local government area (LGA) (**Figure 1**). It comprises eight properties known as 63-77 West Parade, West Ryde (Lots 1-8 in DP 19985) providing a total site area of 3,735 square metres (**Figure 2**). The site is currently vacant, having been previously occupied by seven dwelling houses now demolished.



Figure 1 | Locality Map (Source: Proponent's Planning Report for MP 09_0029 MOD 2).



Figure 2 | Site Location (Source: Proponent's Planning Report for MP 09_0029 MOD 2).

The site adjoins two nine storey residential flat buildings to the south, the Northern railway line to the west and Council reserve / car parking to the north. Opposite the site, the western side of West Parade is characterised by older three to four storey residential flat buildings built in 1950's and 1960's.

1.3 Approval History

On 18 June 2010, the Minister for Planning approved a concept plan (MP 09_0029) for a mixed-use development on the site, comprising (Figure 3):

- a part six / part 12 storey residential building with ancillary retail on the ground floor (Building A)
- an eight storey residential building with commercial on the ground floor (Building B)
- a five storey residential building (Building C)
- car parking and landscaping.

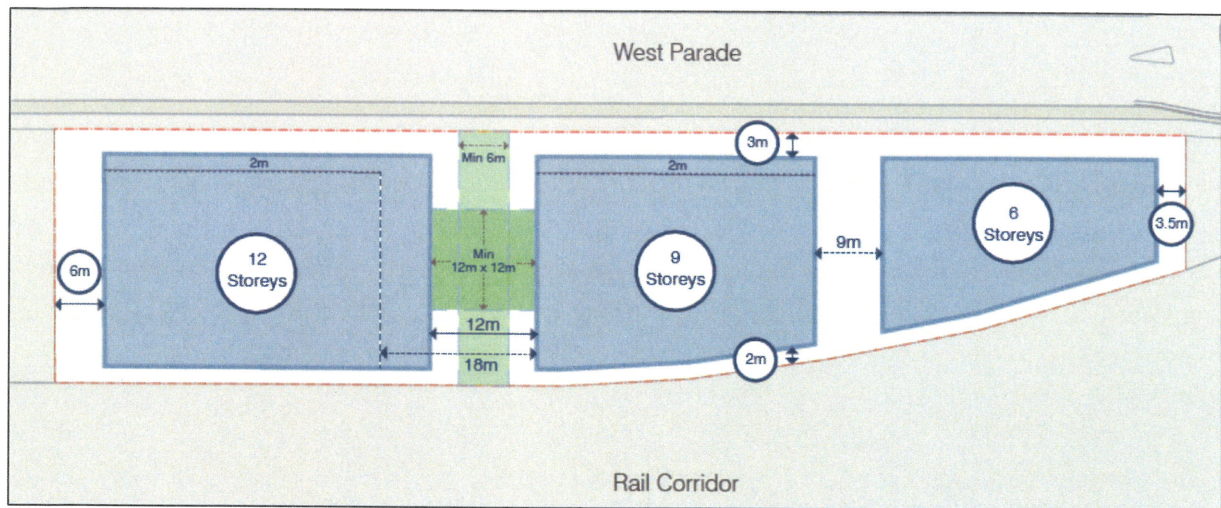


Figure 3 | Concept approval (Source: Major Project website).

On 20 October 2014, the Secretary, as delegate of the Minister for Planning modified the concept approval (Condition A5) to extend the lapse date from 18 June 2015 to 18 June 2018 (MP 09_0029 MOD 1).

On 20 November 2018, the Director Key Sites Assessments, as delegate of the Minister for Planning modified the concept approval to convert the approved commercial and retail floor space to residential, increase the maximum number of dwellings from 138 to 150, increase envelope heights and revise building setbacks (MP 09_0029 MOD 2). The modification also extended the lapse date from 18 June 2018 to 18 June 2020.

Future development applications for the detailed design of the development will be lodged with Council under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).



2. Proposed Modification

The application seeks to modify the concept approval to prevent the approval lapsing on 18 June 2020 by lodging a development application, instead of physically commencing works. No changes are proposed to the approved building envelopes, maximum floor area or dwellings numbers. A link to the Proponent's modification request can be found in **Appendix A**.

The proposal seeks to modify Condition A5 as follows:

*Notwithstanding the details within Part A of Schedule 1, the approval will lapse on 18 June 2020 unless the development has ~~physically~~ **been** commenced, **by way of lodgement of a development application in accordance with the Concept Plan.***



3. Statutory Context

4.1 Scope of Modification

The concept plan was originally approved under Part 3A of the EP&A Act. This means the project satisfies the definition of a 'transitional Part 3A project' under Clause 2(1) Schedule 2 of the *Environmental Planning & Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (ST&OP Regulation), which came into effect on 1 March 2018.

Under clause 3BA of Schedule 2 of ST&OP Regulation a concept approval may continue to be modified under section 75W after 1 March 2018 where the Minister is satisfied that:

- the proposed modification is to correct a minor error, misdescription or miscalculation, or
- the proposed modification is of minimal environmental impact, or
- 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).

The Department is satisfied the modification request is of minimal environmental impact for the following reasons:

- the proposal does not alter the approved building envelopes, floor space or dwelling numbers
- the character and residential nature of the approved development remains unchanged
- the modification does not result in any amenity impacts on surrounding development
- the proposal aligns the lapsing provisions within the concept approval to section 75Y of the EP&A Act.

The Department concludes the Minister (or his delegate) can reasonably form the view that the modification request is within the scope of section 75W of the EP&A Act and is capable of being determined pursuant to the transitional provisions under clause 3BA of Schedule 2 of the ST&OP Regulation.

4.2 Approval authority

In accordance with the Minister's delegation dated 11 October 2017, the Director Key Sites Assessments may approve the section 75W modification request as:

- the relevant council has not made an objection
- a political disclosure statement has not been made
- no public submissions in the nature of objection were received.

4.3 Objects of the Act

The Minister or delegate must consider the objects of the EP&A Act when making decisions under the Act. The Department is satisfied the concept approval as modified will remain consistent with the objects of the EP&A Act.

4.4 Environmental Planning and Assessment Regulation 2000

Subject to any other references to compliance with the EP&A Regulation cited in this report, the relevant requirements for notification and fees have been satisfied.



4. Engagement

5.1 Department's Engagement

The Department made the modification request publicly available on its website. Given the nature of the proposed change, the modification request was not notified to Council or any Government agencies. No submissions were received on the proposal.



5. Assessment

This application seeks to modify the concept approval to prevent it from lapsing on 18 June 2020 by lodging a development application, instead of physically commencing works. No changes are proposed to the approved lapse date, building envelopes, maximum floor area or dwellings numbers.

The Proponent advises that while it is progressing the procurement process for the development, the timing of any future approvals and commencement of physical building works is largely beyond its control. Therefore, the Proponent requests Condition A5 be amended to prevent the approval lapsing on 18 June 2020 by lodging a development application, instead of physically commencing works.

The Department notes section 75Y of the EP&A Act permits the Minister to impose a condition that stipulates an approval lapses on a specific date unless a 'specified action' has taken place. This specified action includes the commencement of work or the submission of a development application for the project.

Currently, Condition A5 stipulates the concept approval will lapse on 18 June 2020 unless development has physically commenced, which the Department considers to be physical building works. However, the Department acknowledges that section 75Y of the EP&A Act specifies the submission of a development application could also prevent the lapsing of a concept approval.

The Department considers that requiring works to physically commence to prevent the lapsing of a concept approval is unreasonably restrictive, especially as the detailed design is yet to be confirmed and is subject to further development consent. Further, the modification request does not seek to extend the lapse date, but rather aligns the approval with section 75Y of the EP&A Act and the approach taken on other concept approvals where conditions are imposed to allow the lodgement of a development application to prevent a concept approval from lapsing. The Department therefore considers the modification of Condition A5 to be acceptable.

While the Proponent has suggested amendments to Condition A5 (Section 2), the Department recommends the following changes to ensure the wording aligns more accurately with the provisions of section 75Y of the EP&A Act and other concept approvals:

Notwithstanding the details within Part A of Schedule 1, the approval will lapse on 18 June 2020 unless ~~the development has physically commenced~~ **a development application is submitted to carry out any part of the project or development for which concept approval has been given.**

Subject to these changes, the Department supports the modification request and recommends Condition A5 be amended accordingly.



6. Evaluation

The Department has assessed the modification request and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification request is appropriate as it meets the relevant statutory requirements and is of minimal environmental impact.

The Department considers the current requirement to physically commence building works to prevent the lapsing of the concept approval is unreasonably restrictive and notes conditions imposed on other concept approvals allow the lodgement of a development application to prevent them from lapsing.

Consequently, the Department concludes the modification request is in the public interest and should be approved, subject to the recommended changes to the existing conditions of consent as outlined in **Appendix B**.



7. Recommendation

It is recommended that the Director of Key Sites Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report
- **determines** that the application to modify the Concept Approval (MP 09_0029 MOD 3) falls within the scope of Section 75W of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approval to the application
- **modify** the Concept Approval (MP 09_0029)
- **signs** the attached Modification of Minister's Approval (**Appendix B**).

Recommended by:

James Groundwater
Senior Planning Officer
Key Sites Assessments

Recommended by:

Brendon Roberts
Team Leader
Key Sites Assessments



8. Determination

The recommendation is **Adopted by:**

David McNamara
Director
Key Sites Assessments



Appendices

Appendix A – Modification Request

The modification request and supporting information can be found on the Department's website:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9945

Appendix B – Recommended Modification of Minister's Approval

The recommended Modification of Minister's Approval can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9945