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04 June 2020

Amy Watson  
Department of Planning, Industry & Environment  
4 Parramatta Square  
12 Darcy Street  
Parramatta  
NSW 2150

Dear Amy,

## **MARRICKVILLE METRO SHOPPING CENTRE - MODIFICATION APPLICATION (MP09\_0191 MOD10)**

### **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 (AMPC) to modify the Major Project Approval MP09\_0190 for Marrickville Metro Shopping Centre, at 34 Victoria Road and 13-55 Edinburgh Avenue, 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 and constitutes substantially the same development as previously approved. The modification will be MOD10 to MP09\_0191 and seeks the following:

- To amend the wording of Condition B3 which relates to the surrender of development consents.
- To amend the wording of Condition E19 which relates to the control of noise from plant.

## SITE AND SURROUNDING CONTEXT

Marrickville Metro is a sub-regional shopping centre, located approximately 7km south west of the Sydney Central Business District, some 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 close by the centre, which connect to other local centres, services and railway stations.

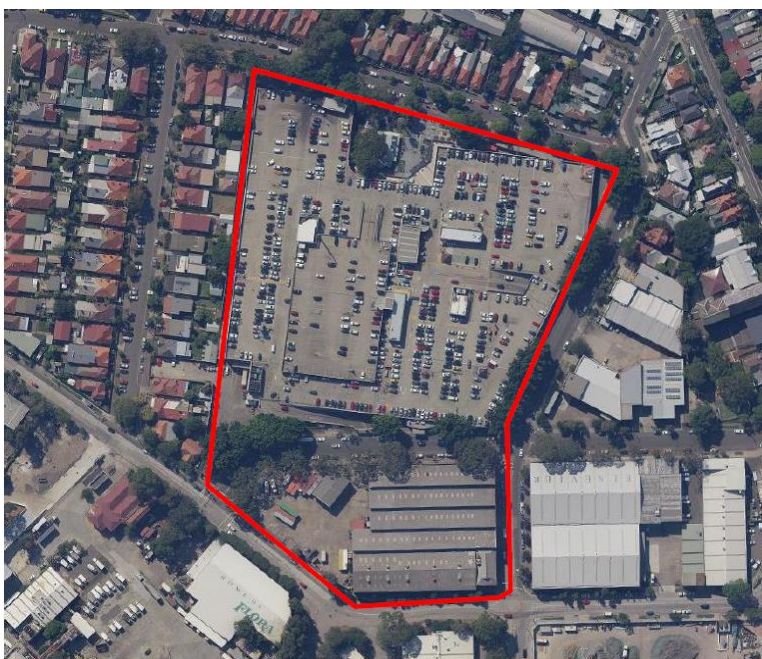
The Marrickville Metro site comprises two parcels of land being 34 Victoria Road (the existing Marrickville Metro shopping Centre site) and 13-55 Edinburgh Road (the shopping centre expansion site). The existing shopping centre at 34 Victoria Road accommodates major tenants including Kmart, Woolworths and Aldi, along with a range of speciality stores and roof-top car parking. The site was formerly occupied by a two-storey brick factory/warehouse building.

This former warehouse building at the expansion site at 13-55 Edinburgh Road has now been demolished, apart from the facades that are due to be retained in accordance with the Major Project Approval (MP09\_0191). AMPC are now well into the process of constructing the new building at 13-55 Edinburgh Road in accordance with the Major Project Approval. This will form the expansion to the Marrickville Metro and will incorporate a pedestrian bridge that will link into the existing shopping centre. Construction is due to be completed in October 2020.

To the North of the site are residential properties and Enmore Park. To the West of the site is an electrical substation, with residential properties located on Bourne Street on the other side of the substation. To the South and East of the site are primarily industrial and warehouse uses, with a distribution centre on the southern side of Edinburgh Road.

The subject site is legally described as Lot 100 in DP 715231 (existing centre) and Lot 10 in DP 1255587 (expansion site). An aerial view of the site is contained in Figure 1 below.

Figure 1 – Aerial view of the site (*source: Urbis*)



## DEVELOPMENT BACKGROUND

The existing shopping centre and expansion site are subject to a Major Project Approval (MP09\_0191) (MPA), which was granted on 19th March 2012.

This was a concept plan approval which approved the expansion of the Marrickville Metro Shopping Centre. The concept approval was approved at project detail, subject to conditions. As such, no further environmental assessment requirements were imposed pursuant to the former Section 75P(1)(c) of the Environmental Planning and Assessment Act 1979.

The MPA has been modified several times, with the most recent modification (MOD 9) granted in April 2020. A summary of the primary consent and subsequent modifications are set out in Table 1 below.

Table 1 - Major Project Approval and Subsequent Modifications

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.
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.

Approval Date	Reference	Description of Works
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.
18 <sup>th</sup> July 2019	MP09_0191_MOD7	This sought to amend three conditions of the consent relating to the staging of the payment for bonds and deposits for the protection of Council's infrastructure during development, along with permitting the developer to apply to Council to amend hours of construction where necessary.
13 <sup>th</sup> November 2019	MP09_0191_MOD8	This sought to modify Conditions A1, A2 and B15 of the Major Project Approval.
12 <sup>th</sup> April 2020	MP09_0191_MOD9	Design amendments including adding roller shutters to the Smidmore Street loading dock, installation of a pergola and outdoor seating on the southern side of the existing centre, and the relocation of entrances and car parking spaces. Deletion of Commitment 9 in the Statement of Commitments relating to signage.

## PROPOSED MODIFICATIONS

This proposed modifications to the MPA that are part of this S75W application are as follows:

- **Surrender of Development Consents (Condition B3)** - It is proposed to amend the wording of this condition to specifically exclude two historic consents from the operation of this condition.
- **Noise from Plant (Condition E19)** – It is proposed to amend the wording of this condition to correct an omission in the approved drafting, which would clarify the application of the *Industrial Noise Policy* in connection with plant at the site.

## CONDITION B3 SURRENDER OF CONSENTS

Condition B3 was attached to the original Major Project Approval and requires the surrender of all previous development consents applying to the site at the date of the original approval, which was 19<sup>th</sup> March 2012.

Condition B3 states:

*'In accordance with Section 104A of the Environmental Planning & Assessment Act 1979, the proponent must issue a surrender notice to Marrickville Council under clause 97(3) of the Environmental Planning & Assessment Regulation 2000 in respect of all development consents applying to the land in existing as at the date of this approval.'*

*'The proponent must issue the surrender notice prior to the issue of the Construction Certificate for Stage 1B of the approved development. Any such surrender may be expressed conditionally to operate only upon issue of the first Construction Certificate.'*

To meet the requirements of this condition an application to surrender the consent was lodged with Inner West Council (Council) on 5<sup>th</sup> December 2018 in accordance with *Section 97(e) of the Environmental Planning and Assessment Regulation 2000* and Condition B3 of the MPA. The application sought to surrender the original (and only) consent for industrial operations at the shopping centre expansion site at 13-55 Edinburgh Road (Ref: DA200600487).

However, following lodgement of the application, Council advised AMPC that the process to discharge the condition would require the surrender of all the consents that apply to both parts of the shopping centre site. This would therefore include any previous consents relating to the existing shopping centre at 34 Victoria Road.

Since that time, AMPC have been working with Council to identify the relevant consents that are required to be surrendered. This has involved extensive reviews of application records and historical consents, the majority of which are not recorded on Council's electronic portal. This has been an exhaustive and time-consuming process, but now has realised in excess of 100 consents that apply to the site and consequently need to be surrendered.

Further to a review of these development consents, it has become evident that two of the consents would create ongoing operational issues at the site if surrendered. These consents relate to:

- **DA 215D/86** – *'To use Shop M1 in the Marrickville- Metro' Shopping Complex at 34 Victoria Road, Marrickville for a Super K-Mart, garden shop, restaurant, auto car centre and associated amenities, staff offices and preparation areas.'* Approved 22<sup>nd</sup> June 1987
- **DA 650/00** – *'To construct a reception area/waiting room adjacent to Kmart tyre and auto service on the roof of Marrickville Metro.'* Approved 8<sup>th</sup> January 2001

These consents both relate to the operation of the Kmart Auto (now re-branded to MyCar) use on the rooftop of the existing centre at 34 Victoria Road, although it is noted that DA215D/86 also relates to other approved uses that are not presently in question. The car repair and service business has been operating at the site continually since the late 1990's.

These two applications would have been considered under an historic Planning Scheme Ordinance which previously would have covered the site. The way in which uses were characterised at that point in time would be different to the present definitions of various uses, as contained within the current *Marrickville LEP 2011* (MLEP 2011).

Under the MLEP 2011, the use would be characterised as a 'Vehicle Repair Station' which is defined as:

*'vehicle repair station means a building or place used for the purpose of carrying out repairs to, or the selling and fitting of accessories to, vehicles or agricultural machinery, but does not include a vehicle body repair workshop or vehicle sales or hire premises.'*

In the MLEP 2011, the 34 Victoria Road site is located within the B2 Zone (Local Centre) where vehicle repair stations are expressly prohibited, as identified below in the extract of the MLEP2011.

## **Zone B2 Local Centre**

### **1 Objectives of zone**

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To provide housing attached to permissible non-residential uses which is of a type and scale commensurate with the accessibility and function of the centre or area.
- To provide for spaces, at street level, which are of a size and configuration suitable for land uses which generate active street-fronts.
- To constrain parking and reduce car use.

### **2 Permitted without consent**

*Home occupations*

### **3 Permitted with consent**

*Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hostels; Information and education facilities; Medical centres; Oyster aquaculture; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Service stations; Shop top housing; Tank-based aquaculture; Tourist and visitor accommodation; Any other development not specified in item 2 or 4*

### **4 Prohibited**

*Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Environmental facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Pond-based aquaculture Port facilities; Recreation facilities (major); Residential accommodation; Rural industries; Sewerage systems; Sex services premises; Storage premises; Transport depots; Truck depots; Vehicle body repair workshops; **Vehicle repair stations**; Warehouse or distribution centres; Waste or resource management facilities; Water recreation structures; Water supply systems; Wharf or boating facilities.*

It is understood that the purpose of Condition B3 was to 'streamline' the active consents which relate to the shopping centre, so that it was clear for the Council and local community the principal consent relating to the site. However, the MPA only approves uses for 'retail premises' and 'business premises' and does not approve a 'vehicle repair station'.

If the two development consents relating to the operation are surrendered, the existing use rights for the vehicle repair station would be lost. Furthermore, there would be no avenue through a development application to regularise the existing use, given it is currently prohibited under MLEP 2011.

Although the Kmart Auto use was permissible at the site at the time of granting the consent in 1987 and has been constructed and operated continuously since that time; the effect of the current wording of Condition B3 could jeopardise the future of the existing business.

It is clear to both AMPC and Urbis that it was not the intention of Condition B3 on the MPA to restrict the operation of the tyre and auto use on the rooftop of the shopping centre, which by 2012 had been operating for many years. It seems that this is an unintended consequence of the well-intentioned objective to rationalise the consents which apply to the site.

Given these circumstances, we have discussed the matter with Council who have suggested that AMPC seek to modify the wording of the Condition B3 to remove the requirement to surrender these consents. This appears to be the most pragmatic approach to the issue and would allow the continued operation of the approved use, which currently employs four people.

## Suggested Condition Wording

It is recommended that the wording of the condition is updated to exclude the two consents relating to the tyre and auto use, from the operation of the condition.

It is suggested that the condition should be reworded as follows (additions in **red**):

*'In accordance with Section 104A of the Environmental Planning & Assessment Act 1979, the proponent must issue a surrender notice to Marrickville Council under clause 97(3) of the Environmental Planning & Assessment Regulation 2000 in respect of all development consents applying to the land in existing as at the date of this approval **except for the following consents:***

- **DA 215D/86 – Approved 22<sup>nd</sup> June 1987**
- **DA 650/00 – Approved 8<sup>th</sup> January 2001**

*The proponent must issue the surrender notice prior to the issue of the Construction Certificate for Stage 1B of the approved development. Any such surrender may be expressed conditionally to operate only upon issue of the first Construction Certificate.'*

## CONDITION E19 NOISE FROM PLANT

Condition E19 was also attached to the original MPA as granted in 2012. This seeks to control the noise levels from the associated plant at the site. The condition states:

*'Prior to issue of the Occupation Certificate for Stage 1B and the Occupation Certificate for Stage 2, a certificate from an Acoustic Engineer is to be submitted to the Certifying Authority certifying that the garbage compacting system, air-conditioning, lift motors, pumps and plant rooms have been installed so as not to exceed more than 5dB(A) above the background level during the day and evening and not exceeding the background level at night (10.00pm to 6.00 am) when measured at the boundary of the property, and will comply with the DECC Industrial Noise Policy.'*

This appears to be a relatively standard condition that was applied to the consent by the Department of Planning at the time of the original approval. However, now that the development is under construction, a further detailed assessment of the operation of the condition has been undertaken by AMPC's Acoustic Consultants, Marshall Day Acoustics.

Marshall Day Acoustics have identified that the wording of the condition contains a critical omission, which would affect the way in which the condition operates at the site. This is in the final sentence of the condition where the wording indicates that noise measurements should be taken '*at the boundary of the property*'. This conflicts with the guidance identified within the *Industrial Noise Policy* referenced within the condition, which distinguishes between industrial/commercial boundaries and residential boundaries.

As such, the condition could be interpreted to require far more stringent sound level compliance than would normally be expected under the relevant guidelines. As written, the condition applies a residential noise criterion to a non-residential boundary, given none of the immediate property boundaries of the development are with residential uses. This is not the intention of the Environmental Protection Authority (EPA) guidelines.

Urbis has also liaised on this matter with Julie Kisa, an Environmental Health Officer at Inner West Council, on 3<sup>rd</sup> June 2020. Initial discussions indicated that this is a reasonable approach to clarify the intention of the condition and clear up any uncertainty as to how the condition should operate.

As such, this modification application seeks to clarify the wording of the condition to identify clearly the type of boundary of the relevant receptor. Further details of the EPA guidelines and approach to this condition are provided in the Memo from Marshall Day Acoustics dated 27<sup>th</sup> May 2020, which is attached at Appendix A.

## Suggested Condition Wording

In view of the above, we suggest the rewording of Condition E19 to meet the intent of the original condition:

*Prior to issue of the Occupation Certificate for Stage 1B and the Occupation Certificate for Stage 2, a certificate from an Acoustic Engineer is to be submitted to the Certifying Authority certifying that the garbage compacting system, air-conditioning, lift motors, pumps and plant rooms have been installed so as not to exceed more than 5dB(A) above the background level during the day and evening and not exceeding the background level at night (10.00pm to 6.00 am) when measured at the boundary of **any residential** property, and will comply with the DECC Industrial Noise Policy.*

## **ENVIRONMENTAL PLANNING ASSESSMENT**

The following environmental assessment addresses the relevant matters pursuant to Section 4.55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and Clause 3BA (5) of Schedule 2 of the Savings and Transitional Regulation.

The proposed amendments simply relate to the limited rewording of conditions that were applied to the original MPA, in order to ensure the better operation of the conditions, and to limit any unintended consequences of the original drafting.

It is considered that given the nature of the proposed modifications to the condition wording, the proposal involves minimal environmental impact and is substantially the same as the project to which the concept plan currently relates. As such, the application should be assessed under S4.55(1A) of the EP&A Act.

## **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.

## **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.

## **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 MPA and subsequent Modifications.

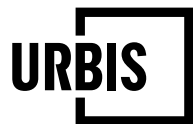
The proposed modification to Condition B3 will also ensure the continued operation of a business at the site which currently employs four people.

Therefore, the proposed modification is considered minor in nature and acceptable for approval.

## **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.



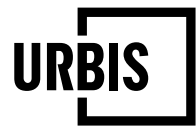
It is therefore requested that consent is granted for this modification to Major Project Approval MP09\_0191.

If you have any queries regarding 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 stroke extending to the right.

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## **APPENDIX A**

## **ACOUSTIC CONSULTANT MEMO**