



Marrickville Metro Modification 10

Amendment to Conditions B3 and E19

Concept Approval Modification Assessment
(MP09_0191 MOD 10)

July 2020



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Cover image: *Perspective view looking west along Edinburgh Road towards the development (Source: MP 09_0191 MOD 6)*

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Glossary

Abbreviation	Definition
Concept approval / concept plan	Approved concept plan for the redevelopment of the site (MP 09_0191)
Council	Inner West Council
Department	Department of Planning, Industry and Environment
EA	Environmental Assessment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
ST&OP Regulation	<i>Environmental Planning & Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i>
GFA	Gross floor area
Minister	Minister for Planning and Public Spaces
Secretary	Secretary of the Department of Planning, Industry and Environment
Proponent	AMP Capital
RtS	Response to Submissions
SEARs	Secretary's Environmental Assessment Requirements
SEPP	State Environmental Planning Policy

1 Introduction

1.1 Background

This report provides an assessment of an application to modify the concept plan for the expansion of the Marrickville Metro Shopping Centre at 34 Victoria Road and 13-55 Edinburgh Road, Marrickville (MP 09_0191), pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (the EP&A Act).

The modification application seeks to:

- amend the wording of Condition B3 (Surrender of Development Consents), to exclude two historic consents for a vehicle repair station from the operation of the condition
- amend the wording of Condition E19 (Noise from Plant), to clarify the application of the *Industrial Noise Policy* to residential properties only
- correct an error in Condition B15 (Local Area Traffic Committee Approval) to delete the requirement for pedestrian traffic signals which was approved in MOD 6.

The application has been lodged by Marrickville Metro Pty Ltd as trustee of the Marrickville Metro Trust (the Owner) and AMP Capital Investors (AMP Capital) (the Proponent). The site is located within the Inner West local government area (LGA).

1.2 The site

The site is the Marrickville Metro Shopping Centre and comprises two parcels of land being 34 Victoria Road and 13-55 Edinburgh Road. It is located approximately 8 km south-west of the Sydney Central Business District (CBD) and approximately 2.5 km from Marrickville Railway Station, 1.1 km south of St Peters Railway Station and 1.6 km north of Sydenham Railway Station (**Figure 1**).

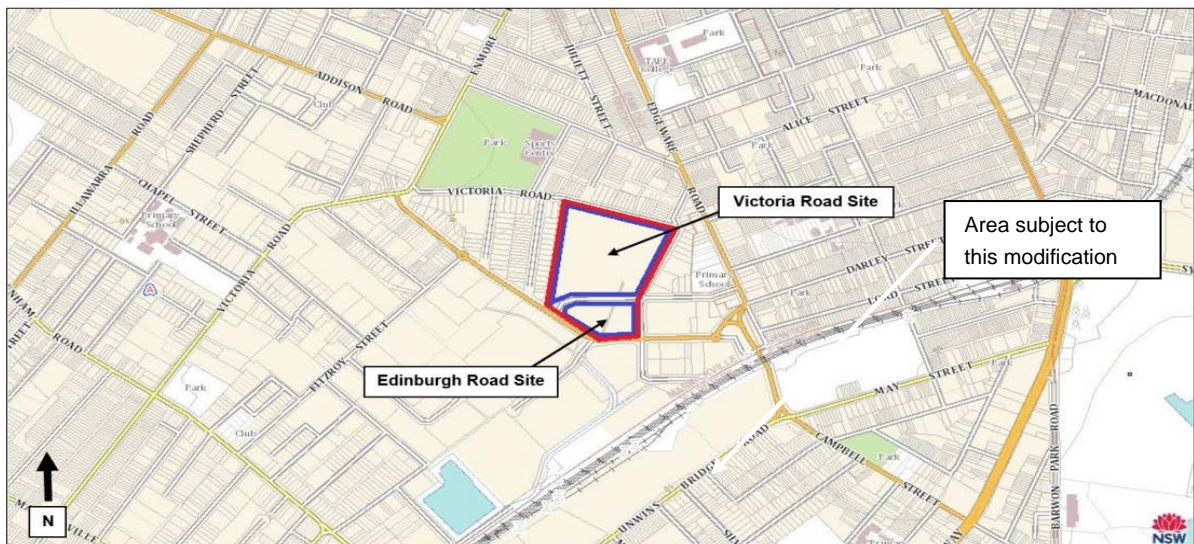


Figure 1 | The concept approval site location (outlined in red) (Base source: Six Maps)

The Victoria Road site is approximately 3.5 hectares in size and fronts Victoria Road to the north, Murray Street to the east, Smidmore Street to the south and is adjacent to residential properties fronting Bourne Street to the west (**Figure 2**). The Marrickville Metro Shopping Centre currently occupies the Victoria

Road site and comprises 28,925 m² of retail GFA. Retail floor space is provided at ground level with rooftop car parking above (1,018 spaces). The site is accessed via Smidmore Street with loading facilities located at the south-western and north-western corners of the site.

The Edinburgh Road site is approximately 0.88 hectares, and fronts Edinburgh Road to the south, Murray Street to the east, and Smidmore Street to the north. The Edinburgh Road site has mostly been demolished, save for the facades that are to be retained in accordance with the concept approval.

Site access is principally via Smidmore Street and loading facilities are located on both the Smidmore Street and Murray Street frontages of the building. The site is adjoined by low density residential properties to the north and west and industrial properties to the east and south.



Figure 2 | Aerial view of the site showing the two sites of the concept approval area (shaded blue), and the surrounding context (Base source: Nearmap)

1.3 Approval history

Concept Approval (MP 09_0191)

On 19 March 2012, the former Planning Assessment Commission (the Commission) approved the concept plan (MP 09_0191) for the expansion of the Marrickville Metro Shopping Centre, including:

- demolition of existing warehouse buildings and associated structures on the Edinburgh Road site
- refurbishment and construction of a first-floor addition to the existing shopping centre building on the Victoria Road site and construction of a new building with two levels of retail on the Edinburgh Road site (total additional 21,780 m² GFA)

- 528 additional car parking spaces (total of 1,628 spaces) in two levels of roof top parking over both buildings
- staging of development, with Stage 1 being the Edinburgh Road site and the south-east corner of the Victoria Road site and Stage 2 being the remainder of the Victoria Road site.

The concept approval was approved at project detail, subject to conditions.

Modifications to the concept approval

The concept approval has been previously modified on eight occasions and a further modification (MOD 4) was withdrawn (**Table 1**).

Table 1 | Summary of Modifications (MP 09_0191)

Ref	Summary of Modifications	Determined by	Type	Status
MOD 1	Internal and external amendments to the Edinburgh Road site and reduction in car parking from 1,628 to 1,606 spaces across both sites.	Director	75W	16 April 2013
MOD 2	Modification to introduce an early works stage (Stage 1A) for works to the northern part of the Victoria Road Site (Figure 3).	Executive Director	75W	23 April 2015
MOD 3	Modification to amend requirements for deliveries to the Victoria Road site.	Director	75W	11 February 2016
MOD 4	This modification did not proceed.	NA	75W	Withdrawn
MOD 5	Modification to defer the execution of the Voluntary Planning Agreement (VPA) with Council until Stage 1B.	Director	75W	27 July 2016
MOD 6	Internal and external amendments including a new pedestrian bridge, realignment of Smidmore Street, public domain landscaping and extension of opening hours for retail tenancies on Smidmore Street.	Executive Director	75W	31 October 2018
MOD 7	Modification to allow the refund of the building security deposit and public domain works bond to the Proponent and allow Council to approve temporary out of hours construction works.	Director	75W	18 July 2019
MOD 8	External modifications to the approved building in Stage 1B, reclassification of 1000m ² GLFA from “mini-major” to “retail premises and business premises” in Stage 1B, introduction of additional “no stopping” parking restrictions on the eastern side of Murray Street.	Director	75W	13 November 2019
MOD 9	Design changes to building façade, introduction of a pergola, relocation of accessible car spaces, and removal of signage commitment from the Statement of Commitments	Director	75W	12 April 2020

2 Proposed modification

On 4 June 2020, the Proponent lodged a request to modify the current approval under section 75W of the EP&A Act (MP 09_0191 MOD 9). The request seeks approval to:

- amend the wording of Condition B3 (Surrender of Development Consents), to exclude two historic consents for a vehicle repair station from the operation of the condition
- amend the wording of Condition E19 (Noise from Plant), to clarify the application of the *Industrial Noise Policy* to residential properties only
- correct an error in Condition B15 (Local Area Traffic Committee Approval) to delete the requirement for pedestrian traffic signals which was approved in MOD 6.

A link to the modification application documents is provided in **Appendix A**.

3 Statutory context

3.1 Scope of modification

The concept plan was originally approved under Part 3A of the EP&A Act. The modification is a transitional Part 3A project under Schedule 2 to the *Environmental Planning & Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (ST&OP Regulation).

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

- the proposed modification is to correct a minor error, misdirection 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 considers the Minister (or delegate) can reasonably form the view that the modification request is of minimal environmental impact and is substantially the same development. The modification is therefore 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. Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or delegate) can be satisfied that the concept plan may be modified under section 75W of the EP&A Act.

Section 75W of the EP&A Act provides that a Proponent may request the Minister to modify the Minister's approval for a project.

3.2 Approval authority

In accordance with the Minister's delegation dated 9 March 2020, the Director, Key Sites Assessments may determine the application under delegation as:

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

3.3 Environmental Planning Instruments

The following Environmental Planning Instruments (EPIs) are relevant to the application:

- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)
- Draft State Environmental Planning Policy (Remediation of Land)
- Marrickville Local Environmental Plan 2011.

The Department undertook a comprehensive assessment of the redevelopment against the above-mentioned EPIs in its original assessment. The Department has considered the above EPIs and is satisfied the modification does not result in any inconsistency with these EPIs.

3.4 Objects of the EP&A 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 proposed modification is consistent with the objects of the EP&A Act.

4 Engagement

4.1 Department's engagement

In accordance with the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation), the modification application was not required to be publicly notified or advertised. However, it was made publicly available on the Department's website on Thursday 11 June 2020, and referred to Inner West Council (Council), with a request for comments by Friday 19 June 2020 (7 days).

4.2 Summary of submissions

The Department received a submission from Council raising no objection to the modification application.

However, Council suggested that instead of modifying Condition B3 (Surrender of Consents) the Concept Approval could be amended to include the vehicle repair station as an approved use, so that the intention of Condition B3 is maintained by providing a clear approval history and means of enforcement.

A copy of the submission may be viewed at **Appendix A**. No public submissions were received.

4.3 Response to submissions

The Applicant provided a Response to Submissions (RTS) on 17 April 2020 which responded to Council's comments. The Applicant maintains its position that excluding the two consents from Condition B3 is a reasonable and appropriate approach and will not undermine the objective of the condition.

The Applicant's response was made publicly available on the Department's website.

5 Assessment

In assessing the merits of the proposal, the Department has considered:

- the modification application and associated documents
- the Environmental Assessment and conditions of approval for the original application (as modified)
- Council's submission and the Applicant's RtS
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act.

The Department considers the key assessment issues are:

- Surrender of consents
- Noise from plant.

Other issues are discussed in **Section 5.3**.

5.1 Surrender of consents

Condition B3 of the Concept Approval requires the surrender of all development consents which apply to the site. This condition was imposed by the then Planning Assessment Commission in response to concerns raised by Council about the number of individual consents that applied to the site.

The Commission authorised the use of the existing building for retail and business premises, to avoid a situation where an existing tenancy had no valid consent.

The Proponent has advised it has worked extensively with Council to identify over 100 development consents that apply to the existing shopping centre. The Proponent has identified two consents which relate to a vehicle repair station on the existing rooftop car park, which is a prohibited use under MLEP 2011, and operates under existing use rights.

The Proponent seeks to amend Condition B3 to remove the requirement to surrender the two consents relating to the vehicle repair station, to allow the use to continue to operate under valid consents.

Council raises no objection to the proposed amendment to Condition B3, however it suggested an alternative approach to include vehicle repair stations as an approved use in the Concept Approval.

The Department notes that under the ST&OP Regulation a concept approval may only be modified where the Minister is satisfied that it corrects an error, is minimal environmental impact or is substantially the same as the project to which the concept plan currently relates.

The Department has considered Council's suggestion to include vehicle repair station as an approved use in the Concept Approval. However, it considers that this is outside of the scope of Section 75W as outlined in the ST&OP Regulation as:

- approving a prohibited vehicle repair station would be beyond minimal environmental impact
- adding a vehicle repair station use is not substantially the same development as the Concept Approval for retail and business premises uses.

The Department notes the Proponent's commitment to identify all historical consents which apply to the site and comply with the requirements of Condition B3. It also acknowledges that if the consents for the vehicle repair station were surrendered the existing use rights would be lost.

The Department therefore supports the proposed modification of Condition B3 to exclude the requirement to surrender the two consents relating to the vehicle repair station. The Department concludes that the proposal ensures the intent of Condition B3 to rationalise the consents which apply to the site is maintained.

5.2 Noise from plant

Condition E19 of the Concept Approval specifies that noise from the garbage compacting system, air-conditioning, lift motors, pumps and plant rooms must comply with the NSW Industrial Noise Policy and not exceed:

- more than 5 dB(A) above the background level during the day and evening
- the background level at night (10.00pm to 6.00 am)

when measured at the boundary of the property.

The Applicant seeks to amend Condition E19 to clarify that the requirements apply to residential properties, and not neighbouring commercial or industrial properties.

The Department notes the Industry Noise Policy 2000 has been replaced by the Noise Policy for Industry 2017, however it continues to apply where referred to in existing consent conditions.

The Industrial Noise Policy provides two assessment procedures:

- controlling intrusive noise impacts for residences (no more than 5db above background)
- maintain amenity for residences and other land uses (recommended acceptable noise levels for different receivers).

As outlined in **Section 1.2** the site adjoins residential properties to the north and west and industrial properties to the east and south. The Department notes that lower of the intrusive criterion (5 dB(A) above background) applies to the residential properties, and the amenity criterion of 65 dB(A) and 70 dB(A) applies to adjacent commercial and industrial properties, respectively.

The Department agrees that condition E19 inadvertently applies the intrusive noise requirements in Condition E19 to all properties, including residential, industrial and commercial.

The Department recommends that Condition E19 is amended to limit noise from plant to:

- no more than 5 dB(A) above the background level during the day and evening at the boundary of any residential property
- the background level at night (10.00pm to 6.00 am) at the boundary of any residential property
- comply with the Industrial Noise Policy at the boundary of any commercial or industrial property.

5.3 Other matters

The Applicant seeks to correct an error in Condition B15 (Local Area Traffic Committee Approval) to delete the requirement for pedestrian traffic signals in Smidmore Street.

The Department notes that the determination of MOD 6 (**Section 1.3**) approved modifications to Smidmore Street to:

- create a one-way shared zone and associated public domain amendments to Smidmore Street
- construct a new pedestrian bridge at the first floor between Stages 1B and 2
- delete the requirement for pedestrian traffic signals.

However, during the determination of MOD 8, which amended Condition B15 to include additional “no stopping” restrictions along Murray Street, the requirement for traffic signals was mistakenly re-instated.

The Department acknowledges this requirement was inserted into the consent in error and supports the Applicant’s request to amend Condition B15.

6 Evaluation

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is appropriate as it:

- maintains the intent of Condition B3 to rationalise planning consents on the site, while allowing two existing consents relating to the approved vehicle repair station to remain valid
- clarifies the requirements for noise from plant at adjacent commercial and industrial properties
- complies with relevant statutory provisions and remains consistent with relevant EPIs and the strategic planning context
- is of minimal environmental impact and within the scope of 75W.


Consequently, the Department concludes the proposal is in the public interest and should be approved, subject to the recommended changes to the conditions of consent (**Appendix B**).

7 Recommendation

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

- **considers** the findings and recommendations of this report;
- **determines** that the modification application (MP09_0191 MOD 10) 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 approving the modification application;
- **modifies** the consent MP09_0191; and
- **signs** the attached Modification of Development Consent (**Appendix B**).

Recommended by:



Amy Watson

Team Leader

Key Sites Assessments

8 Determination

The recommendation is **Adopted** by:



7/7/20

Anthony Witherdin

Director

Key Sites Assessments

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – Relevant Supporting Information

The following supporting documents and supporting information to this assessment report can be found on the Major Project's website as follows:

- Modification Report and Response to Submissions

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10435

- Submissions

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10435

- Associated modifications (MP 09_0191 MOD 1, MOD 2, MOD 3, MOD 5, MOD 6, MOD 7 MOD 8 and MOD 9)

Appendix B – Recommended Instrument of Modification

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10435