



# Planning

***FORMER CARLTON & UNITED  
BREWERY SITE  
26 BROADWAY, CHIPPENDALE***

***Modification of Concept Plan  
MP06\_0171  
Proposed by: Frasers Broadway PTY  
LTD***

***MP06\_0171 MOD 3***

Modification of Minister's Approval  
Section 75W of the Environmental Planning and  
Assessment Act 1979

May 2010

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## 1. INTRODUCTION

On 8 April 2010, Frasers Broadway Pty Ltd (the Proponent) lodged an application to modify Concept Plan approval MP06\_0171 for the former Carlton & United Brewery site, pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* ("the Act").

The Proponent seeks to modify the Concept Plan approval to alter the timing of when a Voluntary Planning Agreement (VPA) must be executed, to allow Project Applications to be determined. This would provide adequate time for the VPA to be exhibited and finalised.

On 11 May 2010, Frasers submitted a letter of offer to the Minister for Planning (dated 20 April 2010) to enter into the planning agreement on the terms negotiated.

## 2. PLANNING HISTORY

### Concept Plan (MP 06\_0171)

On 9 February 2007, Concept Plan approval was issued by the Minister for Planning for the following development:

- a) The layout of development into 11 development blocks, a major new park, and other areas of open space and street layout.
- b) Land uses across the site and for specific blocks/floor levels where specified.
- c) Built envelopes including floor plates and maximum heights.
- d) Maximum floor space (GFA) within each development block and a total 235,000 GFA across the site.
- e) Retention of a range of heritage items of significance.
- f) Street hierarchy for specific streets (including road and pavement widths and provision for bicycles).
- g) Landscaping concept.
- h) Access arrangements and car parking based on the recommended rate and the assumed dwelling mix.
- i) Storm-water management concept.
- j) Voluntary Planning Agreements (VPA) and Statement of Commitments.

### Concept Plan Modification (MOD1)

On 18 July 2007, the Minister for Planning, under delegated authority approved a minor modification to correct a typographical error in the consent notice and clarify future environmental assessment requirements in Part A of Schedule 2 of the Concept Plan.

### Concept Plan Modification (MOD2)

On 5 February 2009, the Minister for Planning approved changes to the Concept Plan including:

- Increased site area and GFA;
- Revised building envelopes for 11 development blocks;
- Reconfiguration of floor plates to development blocks and changes to internal roads;
- Revised residential and commercial land use mix splits;
- Increased public open space;
- Reduced car parking spaces;
- Improved sustainable and energy efficiency measures; and
- Modifications to the VPAs.

## **Current Project Applications**

The Department is currently considering Project Applications for the excavation and construction of basements under Blocks 2, 5 and 9 and construction of Blocks 1, 4 and 2.

## **3. STATUTORY CONTEXT**

### **Modification of a Minister's approval**

The modification applications have been lodged with the Director-General pursuant to Section 75W of the *Act*, which provides for the modification of a Minister's approval including "revoking or varying a condition of the approval or imposing an additional condition of the approval."

The Minister's approval for a modification is not required if the project as modified would be consistent with the existing approval under this Part. In this instance, approval is required as it relates to a key condition imposed on the approval.

### **Environmental Assessment requirements**

In this instance, it was not considered necessary to notify the Proponent of environmental assessment requirements pursuant to Section 75W (3) with respect to the proposed modification, as sufficient information was provided to the Department to consider the application.

## **4. CONSULTATION AND EXHIBITION**

Under Section 75W of the *Act*, a request for a modification of an approval does not require public exhibition. However, under Section 75X (2)(f) of the *Act*, the Director-General is to make publicly available requests for modifications of approvals given by the Minister. In accordance with Clause 8G of the *Environmental Planning and Assessment Regulation 2000*, the request for the modification was placed on the Department's website.

The application was referred to the City of Sydney Council for comment (**TAG B**). The Council have raised no objection to the proposed 6 month timeline given the current VPA still binds the proponent to provide public benefits and provided another form of short term security can be obtained. The Council have suggested two options:

1. withholding the determination of any further Project Applications (excluding Blocks 1, 2 and 4); or
2. requiring the VPA to be signed prior to the release of any Construction Certificates other than those relating to Blocks 1, 2 and 4.

The Department however considers that the 6 month timeframe will be sufficient to ensure the VPA is executed for the delivery of public benefits.

## **5. DESCRIPTION OF PROPOSED MODIFICATION**

The existing wording of condition A1(2) of MP 06\_0171 requires the VPA associated with redevelopment of the site to be executed prior to Project Approval being issued for any new building works.

The Proponent has requested the condition be modified to change the mechanism for executing the VPA from 'prior to Project Approval' to 'within 6 months of any Project Approval being issued for new building works (other than development the subject of

project application MP 09\_0042 for the excavation and construction of basements under Blocks 2, 5 and 9)'.  
 This is to ensure project approvals and building work are not unreasonably delayed by the finalisation of the VPA.

## 6. ASSESSMENT OF MODIFICATIONS

The proposal to alter the timing of the VPA execution is supported. The amendments only seek to alter the mechanism triggering the finalisation of the VPA, not the amount or type of public benefits being secured by the VPA. The modification will allow Project Applications to be determined and buildings to be constructed while the VPA is being finalised.

Frasers have submitted a letter of offer to enter into the VPA on the terms negotiated with the Department. The VPA will be exhibited for a period of 30 days. In this context it is considered that the proposed time frame for the execution of the VPA is reasonable.

### Proposed amendments to original Condition of Approval

The above amendment would require the following modifications to Condition A1(2) of Schedule 2 of MP 06\_0171:

**Table 1: Amendments to conditions of approval**

Existing Wording of Condition	Requested Amendment by Proponent	Department's Proposed Wording of Condition	Supported
The modified Planning Agreement with the Minister for Planning must be executed prior to issuing Project Approval for works related to new buildings.	The modified Planning Agreement with the Minister for Planning must be executed within 6 months of the issuing of any Project Approval for works related to new buildings (other than development the subject of project application MP 09_0042)	The planning agreement with the Minister for Planning must be executed within 6 months of the issuing of any Project Approval for works related to new buildings (other than development the subject of Project Application MP 09_0042).	YES

The Department recommends that the condition of approval be amended accordingly.

## 7. CONCLUSION

The proposed modifications do not result in significant changes to the overall scheme or alter the nature, need or justification of the approved Concept Plan. The proposal, as modified, is consistent with the approved Concept Plan and still achieves the same objectives as assessed for the original approval.

## 8. DELEGATION

Under the instrument of delegation dated 25 January 2010, the Minister has delegated his functions under Section 75W of the Act relating to modifying Part 3A approvals to the Deputy Director General, Development Assessment and Systems Performance. Having regard to the Instrument of Delegation, it is considered appropriate that the application be determined under delegation by the Deputy Director General.

## 9. RECOMMENDATION

It is recommended that the Deputy Director General, Development Assessment and Systems Performance, as delegate of the Minister for Planning:

- (A) **consider** the findings and recommendations of this report;
- (B) **approve** the modification under Section 75W of the *Environmental Planning and Assessment Act, 1979*; and
- (C) **sign** the attached Instrument of Modification (**TAG A**).

Prepared By:




Kim Shaw  
**Senior Planner**  
**Metropolitan Projects**

Endorsed By:



Michael Woodland  
**Director**  
**Metropolitan Projects**

Approved By:



16/5/10

Richard Pearson  
**Deputy Director General**  
**Development Assessment & Systems Performance**