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# Attachment B



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1 February 2011

Ref: 301015-01385  
File:S75W CP Modification Height &  
Footprint

Attention: Mr Michael Woodland  
Director  
Metropolitan Projects  
Department of Planning  
23-33 Bridge Street,  
Sydney

Dear Michael,

## **S75W Request for Modification to Concept Approval MP07\_0106**

### **60 CHARLOTTE STREET, CLEMTON PARK (FORMER SUNBEAM SITE)**

On February 4, 2010 the Hon Tony Kelly MLC issued a Concept Approval pursuant to Section 75O to approve the concept plan referred to in Schedule 1, subject to the terms and modifications in Schedule 2 and the Statement of Commitments in Schedule 4.

#### **1. Minor Modifications as to maximum height and/or footprints**

WorleyParsons acts on behalf of the proponent Parkview Sydney Developments. We submit the attached Request for Modification for your consideration pursuant to *Section 75W* of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* to modify the Concept Approval MP07\_0106 so as to permit minor variations to the footprints and/or maximum heights ( Number of Storeys or RL's) in the approved Concept Plan.

The Concept Approval includes various terms and conditions contained in *Schedule 2 Part A Terms of Approval*,

- ▶ *A1 Development in Accordance with Plans and Documentation* - Clause (a) notes that the Concept Approval is to be 'generally in accordance with MP 07\_0106 and the Environmental Assessment'.
- ▶ *A2 Approval in detail* lists development which is approved. Included in the list within A2(c) Building envelopes including floor plates and maximum heights; and (d) Maximum floor space (GFA) within each development block and a total maximum GFA of 76,128m<sup>2</sup> across the site.
- ▶ *A3 Maximum Gross Floor Area* defines the uses and floor space distribution. The notation below the table states: 'The maximum floor space may not be achievable within the approved height envelope as identified in condition A4.'

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- A4 Building Height and Land Use states that 'All future buildings erected on the site shall not exceed the following building heights and all future buildings shall be limited to the land uses identified on each lot as follows:

Lot / Building	Land use	Maximum Height Storeys / RL
Lot 42	Mixed Use	6 Storeys (refer to A6 for height range)
Lot 41	Mixed Use/ Open Space	6 Storeys (refer to A6 for height range)
Lot 11	Residential/ Childcare	4 Storeys/ RL 39.5 AHD
Lot 21	Residential	3 Storeys/ RL 36.4 AHD
Lot 31 Building 5A	Seniors living	4 Storeys/ RL 32.75 AHD
Lot 31 Building 5B	Seniors living	6 Storeys/ RL 38.75 AHD

We request that A4 Building Height and Land Use aforementioned Table specifying 'Maximum Height Storeys/RL' be modified.

The Concept Approval signed by the Minister states - (b) under Section 75P (1) (b), all future stages of the project be subject to Part 4 of the Act;

Whilst the Minister is not fettered from approving a modification to a Project Application under Part 3A to a building that exceeds the maximum heights specified in the Concept Approval without having to separately amend the Concept Approval, this is not the case if the Council is the consent authority under Part 4. In such circumstances it would appear that to approve a modification to the maximum height in the Stage 1 Project Approval issued, the proponent would be required to seek prior to such an approval being granted a request for modification of the Concept Approval as it relates to say maximum heights and footprints.

Hence, the discretion of the Council under Part 4 in the case of all applications for future stages appears to be limited to the maximum heights and footprints in the Concept Approval, unless the Minister separately approved modifications to the Concept Approval prior to the future stages and applications being considered and determined by Council.

We recognise that the Minister's powers to amend the approved Project Application are not limited by the Concept Approval maximum heights. We understand that any modification of the Stage 1 Project Approval (MP No. 08\_0087) that may exceed the maximum height in the Concept Approval would not require a separate S75W Modification to be approved for the aforementioned project approval.

It is our submission that it is desirable and reasonable that as part of the design development process that involves consideration of the market, design feasibility and environmental matters, minor variations to height and footprints should not be precluded by Schedule 2 Terms of Approval A2, A3 and/or A4.

This is consistent with the distinction made in the *Environmental Planning and Assessment Act* (Act) between 'Concept Applications' from Project or Development Applications whether in Part 3A or Part 4 of the Act.

We request a minor variation to the provisions in Schedule 2 so as to include a notwithstanding clause that permits exceedance of the maximum height limits by 5% (storeys or RL's) nominated



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in A4 Building Heights and Land use Table contained therein. We would also request that footprint of the buildings inclusive of balconies should also be able to be varied by say an increase of 5% of the total footprint area.

The proponent makes no request to seek Section 75W Modification to the maximum GFA nominated in Schedule 2 A3. Further, the proponent does not seek to amend the land uses approved within the Concept Plan. The request for a 5% variation to the maximum height is to allow the design development process to operate within the maximum GFA limits and approved uses.

It is relevant to note that including a clause to permit a minor variation to the maximum height (storey or RL) and footprints avoids duplication and unnecessary administrative costs. It avoids imposing unnecessary constraints on the design process beyond the conceptual level of definition of a project at the Concept Approval stage of the project development process.

## 2. Minor Modification To Include Approval for Display Unit

Secondly, we request a **Modification to Concept Approval MP07\_0106** to include approval to the construction and use of a proposed display unit. This display unit is described in the *Appended Plan A* to this letter.

It is located on part of the subject site already approved to accommodate future stages of development *Appended Plan B* to this letter.

This display facility is to be used for marketing and sales purposes. It also replicates accommodation to be provided within Stage 1. It is not located within the Stage 1 Project Approval portion of the subject site so as not to compromise the construction process. We submit that the construction of such a display unit is ancillary to the Concept Approval and Stage 1 Project Approval. We also submit that locating a display unit of this size and nature does not incur any additional and/or significant adverse impacts and is of a minor nature.

Accordingly, we request that approval be granted to the proposed inclusion of this display unit without further requirement for lodgement of any separate application, assessment and/or subsequent determination. We would request that no further applications, assessments and/or approvals would be required should the location of the display-unit be moved due to any changes to the staging and/or other reasons as long as it is located within the boundaries of the subject site approved in the Concept Plan as suitable for building footprints.

## 3. Summary

In summary, we respectfully submit that

- ▶ it is consistent with the intent of the EP&A Act which makes a clear distinction in both Part 3A and Part 4 between 'concept plans' and specific project and/or development applications. We request that the maximum height limits set in the Concept Approval Schedule 2 Part A, A4 are amended to allow a variation and increase of 5%. We also request that the Concept approval expressly allows the building footprint areas to be reconfigured and increased by 5% without



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necessitating amending the Concept Approval with every future stage of the development.

- the proposed display unit is a minor modification to the Concept Approval, it is ancillary to the approvals granted by the Minister and without any significant adverse impacts – accordingly we request that no further lodgement of applications, assessments and/or determinations would be required and that approval be granted herein by way of S75W Modification.

We appreciate your consideration of these matters and request for S75W Modification to the Concept Approval.

Regards

**SONJA LYNEHAM**

**ANZ Director of Strategy and Approvals**

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