



**MODIFICATION REQUEST:
Mixed Use Development
78-90 Old Canterbury Road, Lewisham**

MP 08_0195 MOD 6

**Modification to minimum floor levels for buildings
- Future Environmental Assessment Requirement
No 7**



Secretary's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

August 2014

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1. BACKGROUND

The purpose of this report is to assess a request to modify the approved Concept Plan for the Lewisham Estate Mixed Use Development, 78-90 Old Canterbury Road, Lewisham. The modification seeks to amend Future Environmental Assessment Requirement 7 to clarify the requirements for the minimum finished floor levels for buildings above the flood level for the site.

1.1 Site Description

The site is within the Marrickville Local Government Area (LGA), approximately 6 kilometres west of the Sydney CBD (Figure 1). The site is also near the boundary of Ashfield LGA.



Figure 1: Local Context Plan

1.2 Previous Approvals

On 15 March 2012, the Planning Assessment Commission (PAC) approved a Concept Plan for a mixed use development consisting of 7 separate buildings ranging in height from 4 to 10 storeys, basement level and at grade car parking, internal and external road works and public pedestrian and cycle pathways. In addition to the department's recommended modifications, the PAC approval required a number of modifications to the development including:

- increased building separation between various buildings;
- removal of the loading area adjacent to Building D and replacement with a landscaped and publically accessible through site link; and
- increased central open space having a total area of not less than 3000m² with a minimum width of 20 metres (excluding on-street parking and adjacent footpath) and with at least 50% of the central open space receiving a minimum of 2 hours solar access at mid winter.

On 19 July 2012, the department advised the proponent that based on the information provided it was satisfied the amended plans complied with Modifications B1, B2 and B3 of the Concept Approval.

On 13 February 2013, the Deputy Director General approved a modification (MOD 2) to amend the timing of the required Voluntary Planning Agreement.

On 5 July 2013, the PAC approved a modification (MOD 1) which provides:

- re-alignment of the space between Buildings A and B ;
- modulation of approved building heights;
- reduction in the size of the central open space from 3,054m² to 3,002m²;
- introduction of the concept of “dual use” spaces to provide flexibility in providing ground floor retail / commercial floor space;
- changes to internal solar access requirements;
- clarification around the provision of affordable housing;
- treatment of the public domain;
- relocation of the loading dock; and
- amending the Terms of Approval and the Statement of Commitments.

On 11 February 2014, the PAC refused a modification (MOD 4) to amend the requirements for solar access to the central open space.

On 14 April 2014, the PAC approved a modification (MOD 5) to amend the framework for the Voluntary Planning Agreement and Section 94 contributions.

The amended layout is depicted in **Figure 2**.



Figure 2: Modified approved Concept Plan (MP08_0195 MOD1)

2. PROPOSED MODIFICATION

The application proposes to amend future assessment requirement 7 to clarify the minimum finished floor levels for buildings above the floor level for the site.

Future assessment requirement 7 is to be modified to read:

*Future Development Applications shall comply with the Cardno Flood Management Report dated 30.11.11, and **future flood studies by the applicant endorsed by Council** consider and address any recommendations in any Council adopted Flood Study and relevant state policies at the time of lodgement of the application to demonstrate the finished floor levels of the buildings will be **not less than 0.5 m above the 100 year ARI flood level** above the probable maximum flood levels for the site and that the development will not adversely impact on any surrounding property (including the light rail corridor) by redirection of flood waters or loss of flood storage.*

The application originally proposed to also amend future assessment requirement 11 relating to through site links and drainage reserves within the open space provision. On 4 August 2014, the proponent withdrew this component of the application.

3. STATUTORY CONTEXT

3.1 Continuing Operation of Part 3A to Modify Approvals

In accordance with Clause 3 of Schedule 6A of the Environmental Planning and Assessment Act (EP&A Act), Section 75W of the EP&A Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or her delegate) may approve or disapprove of the carrying out of the project under Section 75W of the EP&A Act.

3.2 Modification of a Minister's Approval

The modification application has been lodged with the Secretary pursuant to Section 75W of the EP&A Act. Section 75W 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 will be consistent with the existing approval. However, in this instance, the proposal seeks to modify a specific Term of Approval and therefore approval to modify the application is required.

3.3 Environmental Assessment Requirements

Section 75W(3) of the EP&A Act provides that the Secretary may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.

In this instance, following an assessment of the modification request, 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 suitable information was provided to the department to consider the application.

3.4 Delegated Authority

On 4 April 2013, the then Minister for Planning & Infrastructure delegated his functions to determine modification requests under Section 75W of the EP&A Act to the Department in cases where:

- the relevant local Council has not made an objection, and
- a political disclosure statement has been made, but only in respect of a previous related application, and
- there are less than 10 public submissions in the nature of objections to the proposal.

Council does not object to the application and a political disclosure statement was made, but only in respect of a previous related application. As more than 10 public submissions objecting to the development have been received, the application is referred to the Planning Assessment Commission for determination in accordance with the Minister's delegation dated 14 September 2011.

4. CONSULTATION AND SUBMISSIONS

In accordance with Section 75X of the EP&A Act and clause 8G of the EP&A Regulation, the Secretary is required to make the modification request publicly available. The modification request was made available on the department's website and referred to Marrickville Council for comment. Due to the nature of the proposed modification, the modification request was not exhibited by any other means.

Council initially objected to the proposed changes to future assessment requirement 11 relating to through site links and drainage reserves within the open space provision. However, as noted in Section 2, this aspect of the proposal was withdrawn. Council does not object to the currently proposed modification to future assessment requirement 7 in relation to floor levels.

17 submissions were received from the public in response to the proposed modification. The public submissions raised objections to the inclusion of through site links and drainage as open space, which is no longer proposed.

The submissions also raised objections to the modification application (MOD 4) to modify solar access requirements to the open space area which was being considered by the department at the same time. The PAC refused this application on 11 February 2014.

The public submissions did not raise any other issues relevant to the modification.

5. ASSESSMENT

The proponent identifies that the requirement for the finished floor levels of the buildings to be above the probable maximum flood (PMF) level for the site is inconsistent with NSW Government's 2005 Floodplain Development Manual, the Marrickville Local Environmental Plan and Development Control Plan. These documents require the floor level to be at least 0.5 metres above the 100 year average recurrence interval (ARI) flood level.

The proponent has consulted with Marrickville Council and Sydney Water in relation to drainage and flooding requirements. Both Council and Sydney Water have confirmed that the finished floor levels of buildings should be 0.5 metres above the 100 year ARI flood level, rather than the PMF.

The department has considered the proponent's request and notes that:

- the PMF level is the likely worst case scenario flood which could occur on the site, and is used to determine the appropriate level for evacuating the site during a flood;
- there is a 1% chance that the 100 year ARI flood level will be exceeded one or more times a year, and this flood event is used to determine the minimum floor levels of residential development; and
- the NSW Government's 2005 Floodplain Development Manual, the Marrickville Local Environmental Plan and Development Control Plan all require floor levels to be a minimum of 0.5 metres above the 100 year ARI flood level.

On this basis, the department considers that the requirement for the floor levels to be above the PMF is onerous and inconsistent with State and local flood planning policy. Noting that Council and Sydney Water support building floor levels at 0.5 metres above the 100 year ARI flood level, the department recommends that the application be approved.

It is also noted that following detailed discussions between Council and the proponent, both parties have requested that the future assessment requirement be amended to require compliance with future flood studies, prepared by the proponent and endorsed by Council. The department supports this modification.

6. RECOMMENDATION

It is therefore recommended that the Planning Assessment Commission:

- (a) **consider** the findings and recommendations of this report;
- (b) **approve** the modifications subject to conditions under Section 75W of the Environmental Planning and Assessment Act 1979; and
- (c) **sign** the attached Instrument of Modification (**Appendix C**).

Endorsed by:



Daniel Keary
Director
Industry, Key Sites and Social Projects

Endorsed by:



14.8.14

Chris Wilson
Executive Director
Development Assessment Systems & Approvals

APPENDIX A MODIFICATION REQUEST

See the department's website at
http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6261

APPENDIX B SUBMISSIONS

See the department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6261

APPENDIX C RECOMMENDED MODIFYING INSTRUMENT

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning under delegation dated 14 September 2011, the Planning Assessment Commission approves the modification of the Concept Plan referred to in schedule 1, subject to the conditions in schedule 2.

Member of the Commission

Member of the Commission

Sydney

2014

SCHEDULE 1

Application No.:

MP08_0195

Proponent:

Karimbla Constructions Services (NSW) Pty Ltd

Approval Authority:

Minister for Planning

Land:

78-90 Old Canterbury Road, Lewisham

Project:

Concept Plan for a mixed use residential, retail and commercial development at 78-90 Old Canterbury Road, Lewisham consisting of:

- residential building retail and commercial floor space;
- basement car parking;
- publicly accessible open space and through site links;
- road works; and
- pedestrian and cycle pathways.

Modification:

MP08_0195 MOD 6: Amendment to Future Assessment Requirement 7 relating to the minimum floor level for buildings above the flood level for the site.

SCHEDULE 2

CONDITIONS

The above approval is modified as follows:

- a) Amend Future Assessment Requirement 7 by the deletion of the struck out words and insertion of the **bold and underlined** words as follows:

Flood Levels

7. Future Development Applications shall comply with the Cardno Flood Management Report dated 30.11.11, and **future flood studies by the proponent endorsed by Council** ~~consider and address any recommendations in any Council adopted Flood Study~~ and relevant state policies at the time of lodgement of the application to demonstrate the finished floor levels of the buildings will be **not less than 0.5 m above the 100 year ARI flood level** ~~above the probable maximum flood levels~~ for the site and that the development will not adversely impact on any surrounding property (including the light rail corridor) by redirection of flood waters or loss of flood storage.