

INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES

URBAN ASSESSMENTS

Action required: for determination: Modification of Development Consent

File No:	S03/00526 Pt4
Application Number:	MOD 109-11-2003 modifying DA 53-2-2003
Date of lodgement:	20 November 2003
On land comprising:	3 Carnarvon Street, Silverwater Lots 1& 7 in DP 837052
Application made by:	Meriton Apartments P / L Level 5 265-267 Castlereagh Street, Sydney
Application made to:	Minister for Infrastructure and Planning
Local government area:	Auburn Council
State electorate:	Hon Barbara Perry. A submission was received on behalf of the local residents to the original DA. No submissions were received in response to the modification.
Notification:	Auburn Council, Sydney Olympic Park Authority
Advertisement	Advertised in Auburn Review Pictorial on 17th December 2003
Public Exhibition	18 December 2003 to 15 January 2004
For the carrying out of:	Amendments to the unit mix, internal reconfiguration of specific units, amendments to balconies, windows and pergolas, addition of glass blocks and skylights, amendment of Condition 3 of DA 53-2-2003 (Tag D)
Estimated cost of works:	n/a
Type of development:	Local Development
Was a public inquiry held:	An inquiry under s.119 of the Act was not held.
Integrated approval bodies:	Not Integrated
Main Issues:	See Planning Report (Tag A)
Compliance with the Act	The application has been considered in accordance with section 96 (2) of the Act and is considered to be substantially the same development. The application has been considered with regard to the matters raised in section 79C of the Act. All submissions received following the exhibition periods were considered. On balance, it is considered that the proposal be supported and an approval be granted.
Applicant views on draft conditions:	The applicant has expressed support for the modified conditions.

Recommendation

It is recommended that the Team Leader, Urban Assessments, as delegate of the Minister for Infrastructure and Planning, under the Instrument of Delegation dated 4 August 2003, pursuant to sections 81 and 96(2) of the *Environmental Planning and Assessment Act, 1979* and clause 122 (2) of the *Environmental Planning and Assessment Regulations, 2000*:

- (A) **approve** the application subject to conditions (Tag B), and
- (B) authorise the Department to carry out notification of determination of the application to modify the consent.

Approved:

Scott Wilson
Senior Planner
Urban Assessments

Michael Brown
Team Leader
Urban Assessments



Planning Assessment Report Application to Modify Development Consent

MOD 109-11-2003 modifying DA 53-2-2003

1 SUMMARY

This report is an assessment of an Application to Modify a Consent number MOD 109-11-2003, which seeks to modify DA 53-2-2003 under section 96(2) of the Act. Meriton Apartments Pty Ltd lodged the application on 20 November 2003.

The application seeks to modify Development Application DA 53-2-2003, approved by the Minister on 30 June 2003.

The application seeks to make amendments to the unit mix, internal reconfiguration of specific units, amendments to balconies, windows and pergolas, addition of glass blocks and skylights and to amend Consent Condition 3 of DA 53-2-2003. The applicant provided details, justification and amended plans to support the modification application, dated 20 November 2003 (Tag D). The application was modified with regard to the unit mix following consultation with DIPNR on 17 February 2004.

The Minister for Infrastructure and Planning is the consent authority for modifications to consents the Minister has granted. Further, under the provisions of Sydney Regional Environmental Plan No. 24 – Homebush Bay Area (SREP24) the Minister for Infrastructure, Planning and Natural Resources is the consent authority. The application has been assessed in accordance with the provisions of SREP24 and the matters for consideration under Section 79C(1) of the Environmental Planning and Assessment Act, 1979.

It is recommended that the modification application be **approved**, with conditions.

2 BACKGROUND

2.1 Site Context

The site is located at 3 Carnarvon Street, Silverwater in the Auburn Council local government area.

The site is located at the eastern end of Carnarvon Street at Silverwater in a mixed industrial and residential area. Principal road access is from the M4/Parramatta Road via Silverwater Road. Abutting the suburb of Newington, the site enjoys the benefits of close proximity to the Millennium Parklands and the Sydney Olympic Park site at Homebush Bay.

2.2 Background to Development Consent

Initially, a Masterplan for the residential development (DA152-5-2002) on the subject site was approved by the Minister on 4 December 2002 in accordance with the provisions of SREP 24. This set applicable planning controls for the site including two and four storey building envelopes, siting and setbacks of buildings, relative building heights and street layout. The Masterplan allowed for 127 units and 251 bedrooms.

Based on the Masterplan, a development application (DA 53-2-2003) was submitted by Meriton Apartments Pty Limited for development consent to construct a mix of 130 residential dwellings with 255 bedrooms comprising apartments and town homes in a residential complex of two and four storey residential buildings as well as car parking and associated strata subdivision. The

DA was approved by the Minister on 30 June 2003 in accordance with the Environmental Planning and Assessment Act, 1979 (the Act).

A modification was submitted (MOD 87-8-2003) to correct the description of the development to include strata subdivision and to amend condition 2 with respect to landscaping plans and condition 3 regarding the provision of a Right of Way (ROW) and positive covenant on the site. Consent was granted on 9 September 2003.

The current modification (MOD109-11-2003) seeks to further modify the development consent (DA 53-2-2003) as detailed in section 3 below.

3 THE PROPOSED MODIFICATION

The proposed modification application seeks consent for the following amendments to the development:

- 1) Amend the unit mix
- 2) Internal reconfiguration to specific units
- 3) Amendments to balconies
- 4) Amendments to windows
- 5) Amendments to pergolas
- 6) Addition of glass blocks
- 7) Provision of skylights
- 8) Amendment to Condition 3 of DA 53-2-2003

A submission prepared by Meriton Apartments dated 20 November 2003 (Tag D) provided details of the proposed modifications, including modified plans, a planning assessment and merit assessment for each proposed modification.

Consultation was undertaken with Meriton regarding the unit configurations and classification of studies as habitable rooms ('bedrooms'). Additional information was provided in during the assessment process on 5th February 2004 (Tag E) and 17th February 2004 (Tag F) as detailed in section 5 of this report.

4 STATUTORY FRAMEWORK

a. Statement of permissibility

The subject site is located within the area covered by SREP24, which provides planning objectives for the Homebush Bay Area and states that development is permissible with consent for any purpose that is consistent with one or more of the objectives.

b. Instrument of consent and other relevant planning instruments

The site is covered by SREP 24 and the Minister is the consent authority. Under Clause 4 of SREP 24 the local environmental planning instruments do not apply to the site and consequently SREP 24 is the primary planning instrument.

The other planning instruments that apply are:

- SEPP 11 – Traffic Generating Development;
- SEPP 55 – Remediation of Land;
- SEPP 65 – Design Quality of Residential Flat Development;
- Draft SEPP 66 – Integration of Land Use and Transport.

Clause 13(a) of SREP 24 requires that the Minister in determining the development application consider any relevant master plan, in this case the approved Master Plan for the site (DA152-5-2002).

The modification proposal is generally considered acceptable with regard to these instruments (Tag C).

c. Legislative context

The development is local development pursuant to Section 79 of the Act and SREP 24.

d. Other statutory provisions

The application is considered to meet the prerequisites of section 96(2) of the Act (as detailed in section 6 of this report) in that the proposed modifications are considered to be of minimal environmental impact, and that the development as modified is considered to be substantially the same development as that to which consent was originally granted. This is considered to be the case. The proposed amendments retain substantially the same development while enhancing the flexible use of units, light and ventilation and the relationship between internal and external living space.

5 ISSUES

The issue of whether specific proposed studies were capable of use as habitable bedrooms arose during the assessment process. A large amount of consultation was undertaken between Urban Assessments and the applicant to resolve this issue. In addition, the exact proposed unit mix and final amended plans showing the exact floor plan of proposed studies was sought by Urban Assessments to allow proper assessment of the modification.

Following submission of the initial modification on 20 November 2003, all information was reviewed and a site visit was undertaken by Urban Assessments on 2 February 2004. Urban Assessments then requested additional information which was provided by the applicant on 6 February 2004 (Tag E). This indicated the addition of approximately 30 studies capable of use as bedrooms which represented a 12% increase on the initial approved development. Meetings with the applicant were subsequently held on 10 February 2004 and 17 February 2004 to clarify whether this was indeed the case. Further information of the unit mix and number of studies capable of use as bedrooms was provided on 18 February 2004 and indicated the addition of 16 bedrooms, 12 of which were confirmed to be studies capable of use as bedrooms. The total development, with the subject modification, therefore comprises 130 units and 271 bedrooms. This represents an increase of approximately 6% in the number of bedrooms from the approved DA (DA 53-2-2003). This is considered to be acceptable in terms of potential impact on open spaces, residential amenity and car parking.

6 CONSULTATION

a. Public consultation

In accordance with SREP 24, the modification was publicly exhibited from 18 December 2003 to 15 January 2004. Three (3) submissions were received (Tag G).

b. Referrals

i. Integrated Approval Bodies

The modification application is not integrated.

ii. Council

The modification application was referred to Auburn Council via letter dated 10 December 2003. Council responded via letter dated 21 January 2004 and raised concerns regarding the size and layout of studies, provision of storage space and the effect of some studies being capable of use as bedrooms on s94 contribution calculations (see section 6.2).

iii. Other

The modification was referred to Sydney Olympic Park Authority via letter dated 10 December 2003. A response was received dated 7 January 2004 and raised concern regarding the minimum width of the pedestrian and cycle access way (right of way) extending east from Carnarvon Street being 4.5m. No further objections were raised.

The modification was also referred to the Mirvac Lend Lease Village Consortium via letter dated 10 December 2003. A response was received dated 23 December 2003 and raised concern regarding potential overlooking due to additional windows, infringement of setbacks along the eastern boundary to the Newington development and the need for consultation with the existing community association that borders the development (see section 7.2).

7 CONSIDERATION

7.1 The Environmental Planning & Assessment Act

i. Section 96

The application has been assessed under the requirements of Section 96(2) of the *Environmental Planning and Assessment Act 1979* with regard to the following:

- (2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:
 - (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
 - (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and
 - (c) it has notified the application in accordance with:
 - i. the regulations, if the regulations so require, or
 - ii. a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and
 - (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

It is considered that the proposed modification is acceptable and appropriate in this instance for the following reasons:

- The proposed modification maintains substantially the same development while enhancing the flexible use of units, light and ventilation and the relationship between internal and external living space. The modification is not anticipated to result in any detrimental impacts on the proposed development or adjacent environments
- Relevant consultation has been undertaken with Auburn Council and the Sydney

Olympic Park Authority (see section 7.2).

- The modification has been notified and exhibited in accordance with legislative requirements and all submissions made concerning the modification have been considered.

ii. Section 79C

The application and the likely impacts of the proposed development have been considered in accordance with section 79C of the Act. Significant issues are discussed below in Section 7.2.

The subject site is considered suitable for the proposed development. Three submissions were received regarding the proposed modification and have been considered as detailed in section 6.2. On balance, the proposed development is considered to be in the public interest.

7.2 Issues

i. Size and Layout of Studies

Issue: The size and layout of studies in the proposed “one bedroom plus study apartments” does not appear to be functional or well organised. Council recommended that Meriton submits floor plans showing how the study rooms can be furnished using the dimensions of readily available furniture.

Raised by: Auburn Council

Consideration: Floor plans with furniture of the proposed studies were submitted by Meriton and considered to be adequate.

Resolution: No further action

ii. Use of Studies

Issue: The studies could instead be used as store rooms or the existing bedrooms and living rooms could be enlarged and have in-built storage provided.

Raised by: Auburn Council

Consideration: Consultation was undertaken with the applicant regarding final floor plans of the proposed studies within individual units. It is considered that studies would be capable of use as bedrooms if they are provided with a door, a window and are of adequate size. The study floor plans in the development were amended to ensure studies do not have these features and consequently are not capable of use as additional bedrooms.

Resolution: No further action

iii. Use of Studies

Issue: Some of the studies are considered large enough to be used as bedrooms which would affect the s94 contribution calculations.

Raised by: Auburn Council

Consideration: This issue was also identified by DIPNR during assessment of the modification. The applicant has been advised that s94 contributions may increase as a result of studies being capable of use as bedrooms and the applicant has accepted this increase.

Resolution: No further action

iv. Right of Way

- Issue:* Any modification to the pedestrian and cycle access way (right of way) extending east from Carnarvon Street must have a minimum width of 4.5m to accommodate maintenance vehicle access.
- Raised by:* Sydney Olympic Park Authority
- Consideration:* Modification to Consent Condition 3 of DA 53-2-2003 was discussed with the applicant. The agreed width was accepted by all parties.
- Resolution:* Consent Condition 3 of DA 53-2-2003 should be amended in accordance with the modification, providing a minimum width of 4.5m.

v. Overlooking

- Issue:* Proposed new windows will increase the already unacceptable overlooking into neighbouring properties and should be rejected.
- Raised by:* Mirvac Lend Lease Village Consortium
- Consideration:* A site inspection was conducted by Urban Assessments on 2 February 2004. The potential for overlooking due to the proposed additional windows was assessed by examination of views from the existing partly built balconies and external site areas. Given the distance to the boundary and higher RL of the neighbouring Newington development, it is considered that additional overlooking will not be significant.
- Resolution:* No further action

vi. Setbacks

- Issue:* There is infringement of setbacks along the eastern boundary to the Newington development. Structure should be removed and the area appropriately landscaped to maintain the setback and privacy between the development and Newington.
- Raised by:* Mirvac Lend Lease Village Consortium
- Consideration:* A site inspection was conducted by Urban Assessments on 2 February 2004. Visual assessment of the eastern boundary indicated no infringement of setbacks has occurred. Landscape elements (planter boxes and an open pergola) only occurred within the set back zone. Landscaping plans have been prepared with consideration for privacy along this boundary.
- Resolution:* No further action

vii. Consultation

- Issue:* Consultation with the existing community association (Dynamic Property Services) that borders the development should be undertaken.
- Raised by:* Mirvac Lend Lease Village Consortium
- Consideration:* Consultation regarding the modification has been undertaken in accordance with legislative requirements, including notification and exhibition. No submissions were received from the community association (Dynamic Property Services) for consideration by the Department.
- Resolution:* No further action

8.1 Determination

The Minister for Infrastructure and Planning is consent authority for modifications to consents the Minister has granted.

- 1) The proposed development as modified is not anticipated to result in any detrimental impacts on the proposed development or adjacent environments

The application has been considered with regard to the matters raised in section 79C and 96(2) of the Act.

The application has been notified in accordance with the Regulations.

On balance, it is considered that the proposed development is acceptable and should be approved.

8.2 Recommendation

It is recommended that the Team Leader, Urban Assessments, as delegate of the Minister for Infrastructure and Planning, *under the Instrument of Delegation dated 4 August 2003*, pursuant to sections 81 and 96(2) of the *Environmental Planning and Assessment Act, 1979* and clause 122 (2) of the *Environmental Planning and Assessment Regulations, 2000*:

- (A) **approve** the application subject to conditions (Tag B), and
- (B) authorise the Department to carry out notification of determination of the application to modify the consent.

Prepared by

Endorsed:

Joanne Glass
Consultant, Urban Assessments

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