



MODIFICATION REQUEST:

61 Mobbs Lane, Epping (former Channel 7 site)

Buildings 4 and 5 (MP08_0257 MOD 4)



Description of Modification Request

- MOD 4 – Deletion of conditions of approval

Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

January 2012

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EXECUTIVE SUMMARY

This report is an assessment of a section 75W modification application (MP08_0257 MOD 4) lodged by Meriton Apartments (the proponent) requesting a modification to project approval MP08_0257, which permitted the construction of buildings 4 & 5. The site is located at 61 Mobbs Lane, Epping.

The modification application originally sought the deletion of six conditions of approval, including Conditions A8, E2, E3, E4, E8 and E9. Meriton stated that the purpose of the modifications was to clarify any ambiguities in the approval and ensure that the development of the site occurs in an efficient and sequential manner.

After concerns were raised by Parramatta City Council (council) and the department about the deletion of conditions E2, E3, E4 and E8, Meriton removed the request to delete Condition E4 from the application. Meriton also now seeks the re-wording of Condition E3 rather than its deletion. Accordingly, consideration of the modification request only relates to the deletion of four conditions of approval (A8, E2, E8 & E9) and re-wording of Condition E3.

Documents, including the plans were made publicly available on the department's website, and consultation was undertaken with Parramatta City Council (Council). While council made objections to the deletion of four conditions that were originally requested to be deleted (E2, E3, E4 and E8), it is considered that these objections have been addressed either through the proponent's amendments (Condition E4), council changing their view (Condition E2), or agreeing with the department's view (Condition E3) and recommendations (Condition E8). Accordingly, it is considered that council does not hold residual concerns with the modification request and their objections no longer stand.

The department has assessed the merits of the proposed modifications and notes that no works are proposed, and has concluded that the deletion of Conditions A8, E2 and E9 and re-wording of E3 would rectify some inconsistencies in the approval and remove unnecessary requirements. This is supported by council. However, the deletion of Condition E8 is not supported by the department or by council for reasons outlined in section 5.

On this basis, the department considers that the proposed modification application should be approved, with the exception of the deletion of Condition E8, as outlined in the recommended modifying Instrument of Approval.

1. BACKGROUND

1.1 The Site

The site, known as 61 Mobbs Lane, is situated on the northern side of Mobbs Lane, approximately 24km from the Sydney CBD within the Parramatta Local Government Area (see Figure 1). The site was previously utilised by Channel 7 as television studios and associated facilities.

The site has an area of 8.9ha, with a frontage of approximately 500 metres to Mobbs Lane. The surrounding development is predominantly low density detached residential dwellings which are mainly characterised by Californian Bungalows and Federation style architecture. A TAFE Campus adjoins the site on the north-eastern boundary.

The eastern proportion of the site is generally flat, while the western portion is undulating. The site has a change in elevation of approximately 30 metres from east to west. A drainage line flows into Terry's Creek along the north-western section of the site.

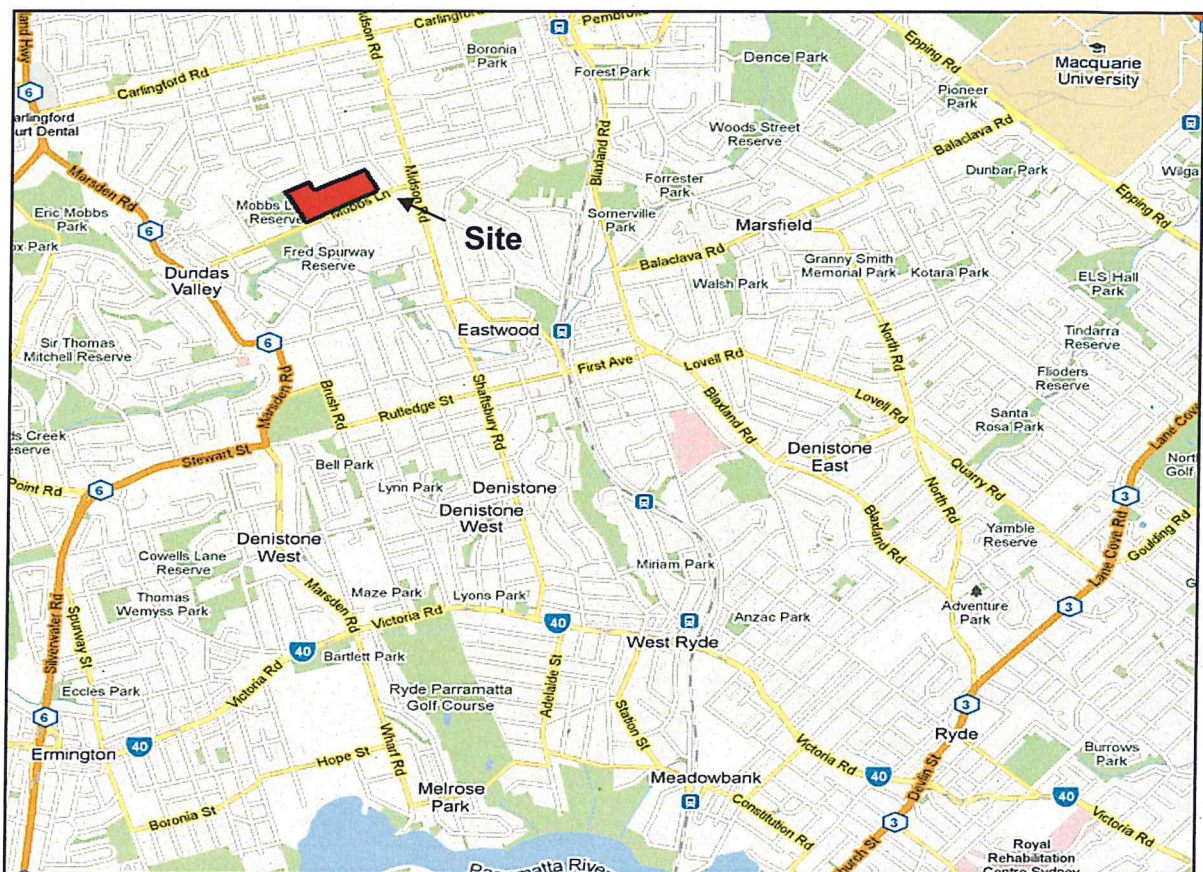


Figure 1: Site location

1.2 Approval History

On 1 August 2006, the site was listed as a State Significant Site in Schedule 3 of the State Environmental Planning Policy (Major Projects) 2005 (now known as the Major Development SEPP).

On 22 August 2008, the then Minister for Planning approved a Concept Plan (MP05_0086) for the site for the construction of residential buildings, amenities, a child-care centre and landscaping.

Buildings 4 and 5

On 15 September 2010, the Planning Assessment Commission approved the construction of residential flat Buildings 4 and 5, located in the central eastern part of the site (**Figures 2 and 3**), providing a total of 134 units, 201 basement car parking spaces and landscaping (MP 08_0257).

A modification (MOD 1) to MP08_0257 was approved on 27 January 2011 by the PAC, which modified the timing for the completion of the required Voluntary Planning Agreement with council.

A second modification (MOD 2) to MP08_0257 was approved on 20 June 2011 by the PAC, which approved a number of internal and external design amendments to buildings 4 and 5.

A third modification (MOD 3) to MP08_0257 was approved on 28 November 2011 by the Deputy Director-General, Development Assessment & Systems Performance under delegation, which approved the strata subdivision of Buildings 4 and 5.

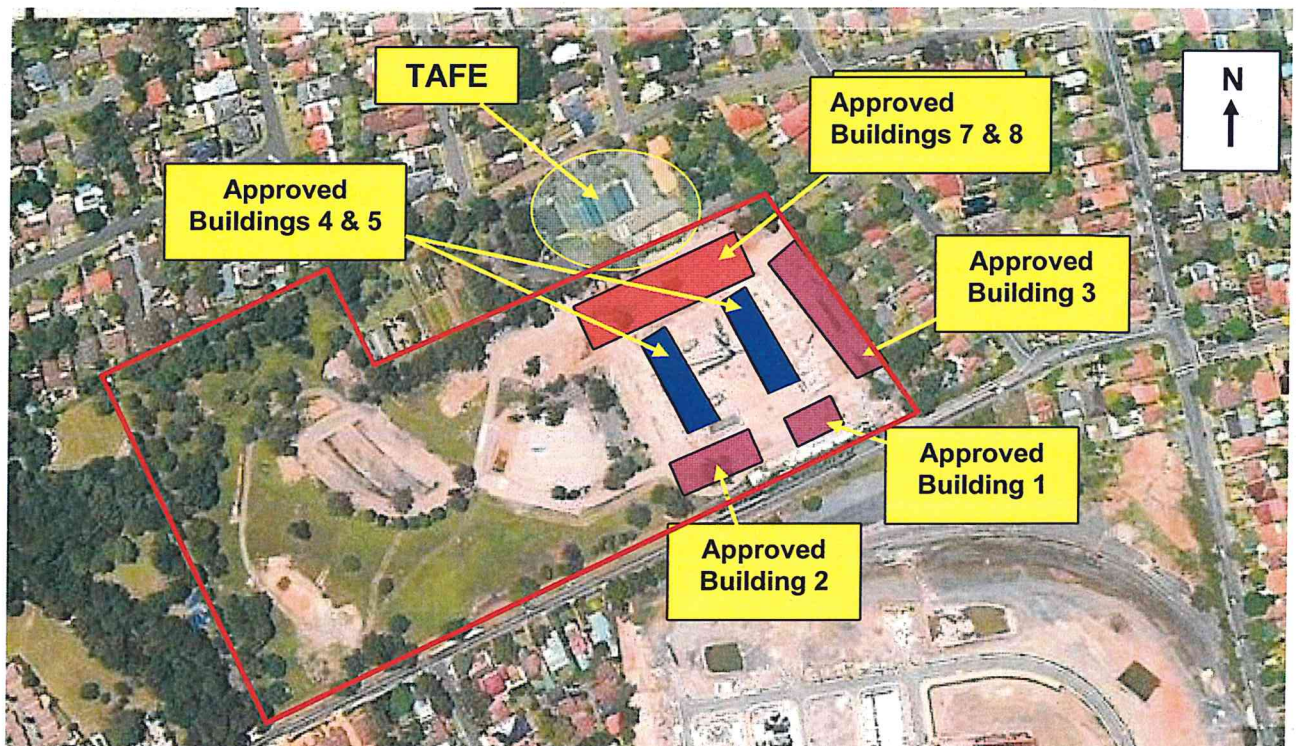


Figure 2: Site layout of buildings 4 & 5

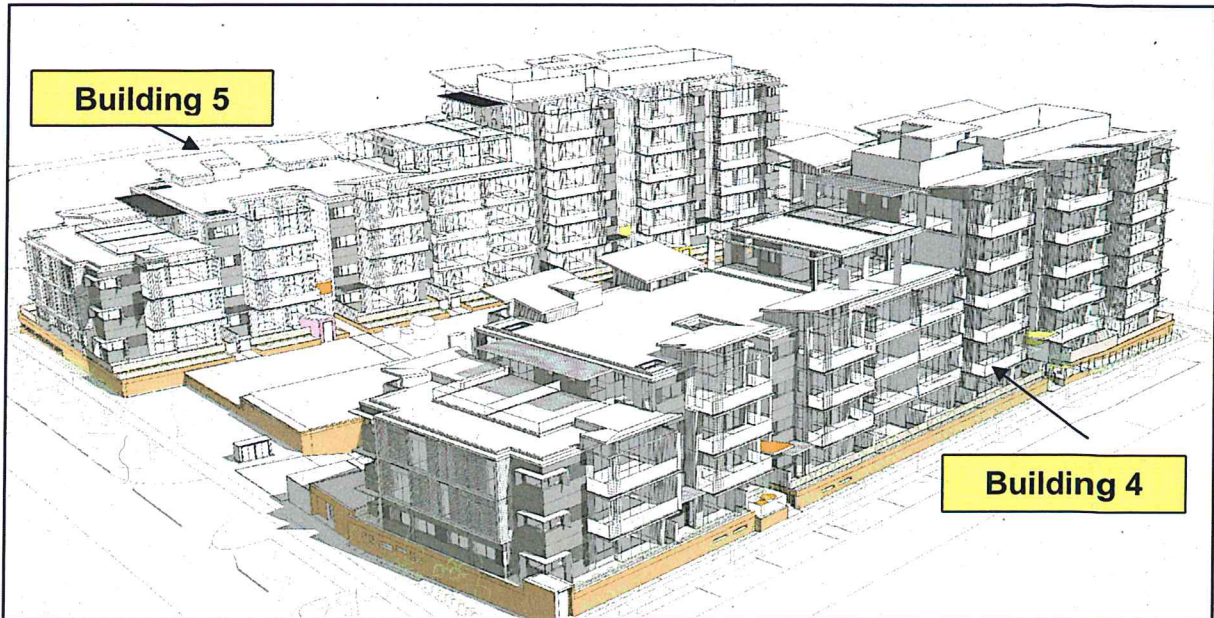


Figure 3: Buildings 4 & 5

2. PROPOSED MODIFICATION

2.1 Modification Description

The proponent originally requested the deletion of Conditions A8 – Further approvals, E2 – Subdivision Certificate, E3 – Compliance Report, E4 – Street Numbering, E8 – Works as Executed Plans and E9 – Post Construction Dilapidation Report to assist with the construction of the project in a logical and sequential manner and remove unnecessary requirements.

Condition E4 which requires an application for street numbering to be lodged with council was originally sought to be deleted by the proponent. This has been removed from the application and thus does not require further consideration by the department.

Consideration of the proposed changes to the five remaining conditions is found at section 5 of this report.

3. STATUTORY CONTEXT

3.1 Changes to Part 3A

In accordance with clause 3 of Schedule 6A of the *Environmental Planning and Assessment Act 1979* (the Act), section 75W of the 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 his delegate) may approve or disapprove of the carrying out of the project under section 75W of the Act.

3.2 Modification of the Minister's Approval

Section 75W(2) of the Act provides that a proponent may request the Minister to modify the Minister's approval of a project. The Minister's approval of a modification is not required if the approval of the project as modified would be consistent with the original approval.

It is considered that the proposed modification request is consistent with the original approval. However, as the proposed modifications seek to delete conditions of approval, the modifications require the Minister's approval.

3.3 Environmental Assessment Requirements

Section 75(3) of the Act provides the Director-General with scope to issue Environmental Assessment Requirements (DGRs) that must be complied with before the matter will be considered by the Minister. Environmental Assessment Requirements were not issued for these modifications as the proponent had addressed the key issues associated with the modification requests.

3.4 Delegated Authority

The Minister delegated his functions to determine a modification request under section 75W of the Act 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.

While council made objections to four conditions that were originally requested to be deleted (E2, E3, E4 and E8), it is considered that these objections are no longer pertinent to the modification request and do not prevent the application to be determined under delegation. Moreover, there have been no submissions received from the public and a political disclosure statement has been made but only in respect of a previous related application and not the subject modification application.

Accordingly, the application is able to be determined by the Deputy Director-General, Development Assessment & Systems Performance, under delegation.

Detailed consideration and explanation of how council's objection has been resolved is provided at sections 4 and 5 of this report.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under section 75X(2)(f) of the Act and clause 8G of the Environmental Planning and Assessment Regulation 2000, the modification request was made publically available on the department's website.

The department also consulted with council, who made a submission in relation to the modification application.

4.2 Public Authority Submissions

Parramatta City Council raised some objections to elements of the modification, all of which are now considered resolved. The department's consideration of council's submission is provided below.

1. Deletion of Condition A8 – Further approvals

No objection.

Department comment

Noted.

2. Deletion of Condition E2 – Subdivision Certificate

Initial objection, but revised submission stating they do not disagree with the department's support for the deletion of the condition.

Department comment

Noted that council no longer object to the deletion of this condition.

3. Deletion of Condition E3 – Compliance Report

Objection to the deletion of the condition, but agree with the department's support for re-wording the condition so that an Occupation Certificate will not be issued until evidence of compliance with the entire approval has been submitted to council.

Department comment

Noted that council support the department's re-wording of the condition.

4. Deletion of Condition E4 – Street numbering

Object to the deletion of this condition but note this request has been withdrawn from the application.

Department comment

This has been withdrawn from the application and requires no further consideration.

5. Deletion of Condition E8 – Works as Executed Plans

Objection. Early works package addressed the general stormwater requirements across the site. It did not address the specific stormwater requirements of each building.

Department comment

The department agrees with council and this will not be deleted. Detailed consideration of this matter is at section 5.

6. Deletion of Condition E9 – Post Construction Dilapidation Report

It is acknowledged that it may be a futile task requiring post construction dilapidation reports for the application given the staging of the development. It would be difficult to ascertain what part of the development caused damage whilst the entire site is under construction. Council would be satisfied that a post construction dilapidation report be undertaken at the completion of all works.

Department comment

The department notes that council supports the deletion of the condition on the basis it is imposed on a project approval which completes the entire project.

4.3 Public Submissions

No submissions were received from the public.

5. ASSESSMENT

An assessment of the proposed modifications is provided below.

5.1 Deletion of Condition A8

The proponent seeks approval to delete Condition A8 as subdivision approval has already been granted under the early works approval. Condition A8 reads as follows:

A8. Further Approvals

The following shall be the subject of separate Development Applications to Council under Part 4 of the Act (except where exempt and complying development applies):

- a) *A separate application must be made for a subdivision certificate. The application is to be accompanied by documentary evidence demonstrating compliance with all conditions of the approval.*

The department notes that Condition A7 of the early works project approval (MP 08_0258) requires the proponent to apply for a subdivision certificate. The deletion of Condition A8 will avoid unnecessary duplication and remove an incorrect reference to 'subdivision certificate' when the project as approved did not seek a subdivision certificate. Council also raised no objection to the deletion of the condition, and therefore its deletion is supported.

5.2 Deletion of Condition E2

The proponent seeks approval to delete Condition E2 as the requirement to obtain a subdivision certificate under section 109J of the EP&A Act has no relationship to the occupation of buildings. Meriton also state that as the Stage 1 strata covers buildings 4 and 5, and as Building 4 is one month behind Building 5 in its completion, the condition will prevent Meriton from lodging the strata plan for building 5 (which has no relationship to occupation) for a further month. This would be unacceptable to purchasers who are ready to occupy and settle on units in Building 5.

Condition E2 reads as follows:

E2. Subdivision Certificate

The Subdivision Certificate shall not be issued until an Occupation Certificate has been issued.

The council originally objected to the deletion of this condition, however following discussions with the department, the council agrees with the department's view that obtaining a subdivision certificate is not a pre-condition for the occupation of buildings under the EP&A Act. On this basis, the department supports its deletion.

5.3 Modification to Condition E3

The proponent originally sought approval to delete Condition E3, although due to the concerns raised by the department and council, now seeks approval to amend the condition. Condition E3 reads as follows:

E3. Compliance Report

The subdivision certificate will not be issued until documentary evidence of compliance with the entire Approval has been submitted to Council.

The wording of the condition should be amended to make reference to the submission of documentary evidence demonstrating compliance with all conditions of approval prior to issue of a final 'Occupation Certificate'. Council also agree with the re-wording of this condition as reference to subdivision certificate is not correct. Consequently, the condition will require the submission of a Compliance Report to council demonstrating compliance with the approval prior to the issue of a final Occupation Certificate. The reference to subdivision certificate will be deleted.

5.4 Deletion of Condition E8

The proponent seeks approval to delete Condition E8 on the basis that the early works project approval requires the submission of stormwater plans. In this regard, the proponent contends that repeating this condition would create uncertainty for the certifying authority and potentially delay the construction and occupation of buildings. Condition E8 reads as follows:

E8. Works as Executed Plans

Works-As-Executed stormwater plans shall be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate, certifying that the stormwater drainage system has been constructed and completed in accordance with the approved stormwater plans. The person issuing the occupation Certificate shall ensure that the following documentation is completed and submitted:

- *The Work-As-Executed plans are prepared on the copies of the approved drainage plans issued with the Construction Certificate and variations are marked in red ink.*
- *The Work-As-Executed plans have been prepared by a registered surveyor certifying the accuracy of dimensions, levels storage volumes, etc.*

Deletion of this condition is not supported as it relates to stormwater works associated with the construction of Buildings 4 and 5 which were not assessed under the early works project application. Council also agree with the department that the early works package did not address the specific stormwater requirements for Buildings 4 and 5. The stormwater concept designed for Buildings 4 and 5 under MP08_0257 deals specifically with the collection, disposal and re-use of stormwater for those buildings, and must be implemented in addition to the stormwater infrastructure approved under the early works project approval.

Consequently, the deletion of Condition E8 is not supported and is recommended to be retained as a condition of approval.

5.5 Deletion of Condition E9

The proponent seeks to delete Condition E9 on the basis that the early works project approval includes a condition requiring the preparation of a post construction dilapidation report. Furthermore, the proponent submits that the location of Buildings 4 and 5 are not located near any adjoining structures (TAFE) or infrastructure assets owned by council.

Condition E9 reads as follows:

E9. Post Construction Dilapidation Report

The applicant shall engage a suitably qualified person to prepare a post construction dilapidation report at the completion of the construction works. This report is to ascertain whether the construction works created any structural damage to adjoining buildings, infrastructure and roads. The report is to be submitted to the PCA. In ascertaining whether adverse structural damage has occurred to adjoining buildings, infrastructure and roads, the PCA must:

- *Compare the post-construction dilapidation report with the pre-construction dilapidation report, and*
- *Have written confirmation from the relevant authority that there is no adverse structural damage to their infrastructure and roads.*

A copy of this report is to be forwarded to the department and council.

As no built structures currently adjoin Buildings 4 and 5, the department agrees that determining the extent of damage of adjoining buildings and infrastructure after the buildings are completed is unnecessary given the significant amount of construction works that will be occurring on site in the future (Stage 2 and Stage 3). Council also agree that it would be difficult to ascertain what part of the development caused damage whilst the entire site is still under construction.

Given that the proponent has commenced work for Stage 1 and is seeking approval for Stage 2 and Stage 3, it is considered appropriate to impose a condition requiring a post-construction dilapidation report upon completion of the last building within Stage 3 of the Concept Plan area. As the project application for this stage is anticipated to be lodged in late 2012, the department considers it appropriate to address this issue during the assessment of the future project application.

Consequently, the deletion of this condition is consistent with council's view and is supported.

6. CONCLUSION

The department has considered the modification application and has considered the key issues associated with these modifications. The department considers that the deletion of Conditions A8 – Further Approvals, E2 – Subdivision Certificate and E9 – Post Construction Dilapidation Report remove unnecessary requirements. The amendment to Condition E3 – Compliance Report ensures that a report is still prepared but removes the incorrect reference to 'subdivision certificate'.

The deletion of Condition E8 – Works as Executed Plans is not supported because specific stormwater plans must be prepared for Buildings 4 and 5, and the plans approved under the early works package do not contain the specific stormwater details of these buildings. It is noted that council agree with the department on this matter and highlight that specific details regarding the provision of stormwater disposal need to be provided separately for Buildings 4 and 5.

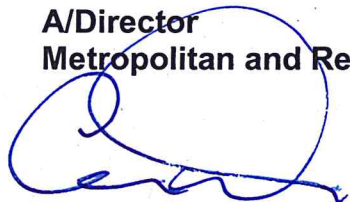
It is therefore recommended that the modification application be approved, with the exception of the deletion of Condition E8, as outlined in the recommended Instrument of Modification Approval.

7. RECOMMENDATIONS

It is recommended that the Deputy Director-General, Development Assessment & Systems Performance:

- a) **Consider** the findings and recommendations of this report;
- b) **Approve** the modification request (MOD 4) in part, under section 75W of the *Environmental Planning and Assessment Act 1979*, and;
- c) **Sign** the attached Instrument of Modification Approval (**Tag A**).


16/1/12
A/Director
Metropolitan and Regional Projects North


17.1.12
Executive Director
Major Projects Assessment