



18 June 2010

CUB Determination of Construction of Mixed Use Retail, Commercial and Residential Building on Block 2

Proposal

The proposal is for:

- the construction of a mixed use retail, commercial and residential building of 66,698sq.m GFA with ancillary retail uses consisting of two towers of 133.0m AHD and 79.5m AHD located above a podium accommodating:
 - o 46,939sq.m of residential floor space comprising 593 residential apartments;
 - o 15481sq.m of retail floor space comprising a food court, specialty retail and supermarket; and
 - o 4,278sq.m of commercial floor space.
- Construction of terraces rising from the plaza to the podium level 2 of the new block 2;
- Installation of a heliostat system;
- Construction of the surrounding public domain; and
- Stratum subdivision of the proposal.

Delegation to the Commission

The Department received a Political Donations Disclosure Statement, from Frazers Broadway Pty Ltd. disclosing a reportable political donation. Consequently, the project meets the terms of delegation and the Planning Assessment Commission may determine the Project under delegated authority. On 19 May 2010, the Director General of the Department of Planning referred the project application (MP 09_0042) to the Planning Assessment Commission for determination under a delegation issued by the Minister on 18 November 2008.

The Commission consisted of Ms Gabrielle Kibble (Chairman of the PAC), Mr Lindsay Kelly (member of the PAC), Ms Kibble chaired the Commission's determination.

Concept Plan

The original modified Concept Plan approvals both acknowledged that full compliance with SEPP 65 was difficult to achieve on this site. The Department in its advice to the Minister endorsed the methodology for calculating solar access under SEPP 65 as 60% of apartments based on a block by block basis and also took into consideration the Proponent's alternative measures for calculating solar access (extended time period of 7:30am - 4:30pm for the site).

The Department accepted that although not all blocks would comply with this reduced standard, on balance the modified Concept Plan was acceptable given its improvements to the original concept plan and the benefits of the scheme.

The Department accepted that strict compliance with SEPP 65 in terms of solar access was unlikely to be achieved for every single residential building on the site and the projects should be considered on a block by block basis.

Key issues

The DG's report identified the following key issues:

- Consistency with the approved concept plan (as modified);
- Urban design and built form;
- Environmental and residential amenity; and
- Heritage.

The DG's report concludes that the impacts of the proposal have been addressed in the Environmental Assessment (EA), the Preferred Project Report, Statement of Commitments and the Department's recommended conditions of approval and can be suitably managed to ensure a satisfactory level of environmental performance.

Commission's meeting with Department 26 May 2010

On 26 May 2010 the commission members, Gabrielle Kibble and Lindsay Kelly met with staff of the Department who briefed the Commission regarding the proposal, during this meeting the Commission raised the following issues:

- Compliance with SEPP65 guidelines. Although the Commission noted that the concept plan approval provides for 60% compliance on average, there is a need for further consideration as to the level of compliance, particularly the western tower, in terms of solar access, residential amenity, cross ventilation, privacy and noise.
- The configuration of some of the units requires fine tuning to ensure acceptable amenity be provided to future residents.
- The Commission agreed that the proposed green wall is a wonderful concept. The concern is the medium and long term viability, the cost and responsibility of maintenance and the management regime.
- Compliance with Building Code of Australia (BCA), particularly of fire, and the cost of compliance.

At this meeting the Commission decided that it would benefit from additional architectural advice. Subsequently Richard Thorp, a member of the Commission was added to the panel determine the proposal.

Additional Information from the Department

On 10 June 2010 the Department wrote to the Commission addressing each of their concerns.

Compliance with SEPP 65 guidelines

The Proponent provided additional information including solar access modelling focussed on 3 different scenarios based on revised apartment layouts. It also investigated the option of reduced solar access for 1.5 hours for apartments in the western tower.

Scenario One combines multiple single bedroom/studio apartments into 3 single apartments across levels 5 to 15 of the western tower by reducing 33 apartments and allows:

- solar access to units within the western tower at 21 June to be increased from 36% to 41%;

- 60% of units within the western tower to receive solar access for 1.5 hours at mid winter;
- 61% of units within the western tower to receive more than 2 hours of solar access at 21 December; and
- A 3% increase in solar access to both towers combined at 21 June.

The Department suggested that Scenario One was the most appropriate scenario in terms of improving solar access and amenity for the western tower without significantly reducing housing supply in this key inner city location.

Configuration of units and amenity to future residents

The Commission raised concerns regarding amenity of the apartments in the eastern tower particularly some of the two key apartments. The Proponent suggested improvements to the amenity of apartments to the eastern tower may also be achieved through reconfiguration of the proposed 2 key apartments located on the south western corner between levels 5 and 28 to a single apartment.

The Proponent maintained that these apartments will remain in single ownership, however the Department considered that the resulting one bedroom apartment provides poor amenity with only one outside aspect enjoyed from 'slots' within the building.

In order to allow for the improved amenity of improved of the two key apartments in the eastern tower the Department suggested an amendment to condition B1 of the original approval to ensure that the two key apartments in the eastern tower be amended to be single 2 bedroom apartments.

Viability of the proposed green wall

The PAC raised concern regarding the viability, maintenance, cost and responsibility of management of the proposed green wall and plantings.

The Department responded by explaining that the recommended condition B17 requires that the Proponent submit a maintenance plan prior to the issue of a Construction Certificate. This plan will be required to detail how access to the planter boxes will be provided, a strategy for decommissioning the planting works should the plants fail and a strategy to ensure the green walls and landscaping is well maintained and attractive throughout its life.

The Department also provided an amendment to Condition B17 of the original approval stating that the maintenance plan must provide for on-going maintenance and reporting of works at scheduled times to the Department.

The Proponent also provided additional information regarding the future ownership of the proposal detailing that now the title structure for Block 2 will involve an initial stratum subdivision with subsequent strata plans for respective strata rather than the proposed umbrella company across all schemes for the building.

The Department recommended that the strata plan be accompanied by a *Strata Management Statement* which includes provisions relating to the maintenance of the vertical green wall and landscaping and provided an amendment to condition F1 of the original approval to this affect.

Compliance with the Building Code of Australia

The PAC raised concerns regarding compliance with the BCA particularly of fire and the cost of compliance.

The Department advised that compliance with the BCA is the responsibility of the Council or the Certifying Authority at Construction Certificate stage and the Council or the Principal Certifying Authority at Occupation Certificate. The Department also detailed the manner in which the developer can achieve compliance with the BCA, the initial and on-going costs of maintenance of fire safety measures and conditions regarding this matter.

Based on the Proponent's BCA report, a review by Department Senior Building Surveyors and the recommended conditions of approval the Department considered that the proposed building is capable of compliance with the BCA.

Commission's Meeting the Department 15 June 2010

On 15 June 2010 the commission members met again with staff of the Department who explained the additional information. Richard Thorp, a member of the Commission was also appointed to determine the proposal at this stage.

During this meeting the Commission again raised concerns regarding:

- Compliance with SEPP 65 guidelines and the previous modified concept plan approval; and
- The viability, management and long term maintenance of plantings intrinsic to the design of the building including planter boxes and the green wall. Of serious concern to the Commission was the reliance of the proposal on the success of proposed plantings and proposed contingency measures in event that the proposed green wall and planter boxes failed.

Commission's Conclusion

The Commission was of the opinion that the proposed alternative scenarios offer marginal improvement and that whilst the original proposal only allows for 60% solar access on a block by block basis, given the process of approval to date and the location of the subject site in an inner city area, a lesser conformity with SEPP 65 in this instance is acceptable.

Based on careful consideration of the proposal and the Department's recommended conditions of approval, the Commission considered that the original proposal could be approved provided three additional conditions as detailed below were inserted into the approval:

- The two key apartments located in the eastern tower defined as RE.C3.01.00 between levels 5 and 28 be amended to 2 bedroom apartments;
- That all planting which is a part of the intrinsic design of the building be centrally irrigated;
- That the proponent is to provide details of proposed plantings demonstrating their long term viability;
- An Architectural Quality Statement which sets out clearly the required architectural quality of the plantings over the effective life of the building, including photographs and other descriptors; and
- A Building Management Statement or Strata Management Statement that requires that the ongoing maintenance of all plantings, both horizontal and vertical be the responsibility of the body corporate.

The Commission requested the Department amend the recommended conditions of approval as detailed above. On 17 June 2010 the Commission received the amended conditions.

The Department also made the following changes to the recommended conditions:

B26

Prior to the issue of the relevant Construction Certificate, details of all amendments and treatments outlined in the **BASIX Certificates submitted with the PPR**, to achieve satisfactory levels of thermal comfort, and satisfactory water and energy ratings, shall be incorporated into the proposed development and provided to the PCA. **Should design changes require amended BASIX Certificates, a copy is to be provided to the Department, along with stamped plans, for information;** and

F1

Prior to the issue of an Occupation Certificate, **the owner must procure the registration of a positive covenant on the title of the land benefiting a public authority** requiring the vertical green walls and landscaping be maintained, repaired and replanted where necessary in accordance with the maintenance schedule approved in Condition **B17** of this approval.

The Commission approved the proposal based on these amendments.



Richard Thorp
Member



Lindsay Kelly
Member



Gabrielle Kibble
Chairman