

23 August 2017

Our Ref: F10/47
Contact: Howard Taylor 9366 3709

Natasha Harras
Team Leader – Modification Assessments
NSW Department of Planning & Environment
GPO Box 39
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Dear Ms Harras

RE: MP 09_0146 MOD 1 – EAST LAKES SHOPPING CENTRE

Thank you for your letter received 8 August 2017 regarding the proposed modification to the Eastlakes Shopping Centre, Eastlakes (DPE Ref: MP 09_0146 MOD 1).

The proposal seeks approval to make changes to the Northern site, including:

- Extend the footprint of the retail podium to the Northern (Gardeners Road) boundary;
- Modify the design of Building 1B, including increase in height of the building (from three storeys to eight storeys);
- Increase overall site floor space from 49,040 sqm to 59,856 sqm;
- Change podium and ground level landscaping, including removal of five trees;
- Increase on-site parking by seven spaces; and
- Make internal modifications to basement and ground floor levels.

Following a review of the information forwarded to Council, a response has been formulated below, to provide further information for your consideration. The response includes some of the pertinent issues associated with both the proposal and the site.

Botany Bay Planning Strategy 2031

The Botany Bay Planning Strategy 2031 (BBPS 2031) recognises the potential role that the Eastern centre of Eastlakes plays in the provision of residential and employment growth.

However, BBPS 2031 notes the following in relation to Eastlakes:

“...The Eastern centres (including Eastlakes) of the LGA, though not as affected by aircraft noise, are poorly serviced by efficient public transport. Eastlakes has a high proportion of strata-titled subdivision in the core area within the centre and poor centre configuration. Additional development potential may be created in the medium term following investment in public transport, site assembly and public domain upgrades.”

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In this regard, it is noted that no master plan has been prepared or endorsed by Council for Eastlakes Town Centre or the wider Eastlakes locality, which would otherwise guide any increase in development density (with appropriate LEP controls). In the absence of such master planning for the Town Centre and immediate locality, Council cannot be supportive of further substantial intensification beyond the previous Part 3A approval. The preparation of a Master Plan would provide opportunities for stakeholder participation during its preparation, including consultation with relevant government agencies, in accordance with the relevant provisions of the EP&A Act.

Building Height, Floor Space Ratio & Site Overdevelopment

The Modification Request represents a significant change to the original application lodged under the former Part 3A provisions of the Environmental Planning & Assessment Act, 1979 (EP&A Act). The previously approved Part 3A application included a maximum building height of 3 storeys and an increase in floor space at the site to maximum 49,040 sqm. The proposed modification now seeks a major increase in height to eight storeys and increase in floor space to 59,856 sqm.

This represents a substantial increase, particularly for a modification to an application for development. In terms of planning legislation it is not considered a modification when an additional five storeys and 10,816 sqm of floor space are being sought. Council contends that this new proposal should be considered a new application.

It is unclear as to where the additional floorspace is to be accommodated. Council would appreciate clarification of this issue and an opportunity for further comment on receipt of the information.

The Botany Bay Local Environmental Plan 2013 (BBLEP 2013) currently includes the following zoning and development standards for the subject land:

- Zone: B2 Local Centre
- Height Of Building: 14 metres
- Floor Space Ratio: 1.5:1

When considering the applicable provisions of the BBLEP 2013, the original proposal of three storeys represents a more appropriate planning outcome for the site, and the broader locality, which predominantly comprises three and four storey walk ups. Introducing a building of eight storeys in height is out of character with the locality, and without master planning to date, could result in a range of adhoc planning outcomes for the broader locality.

The site comprises an area of approximately 24,053 sqm. The Modification Request proposes an increase of almost 11,000 sqm, which will result in 59,856 sqm of Gross Floor Area. This represents an FSR of 2.49:1. This is significantly higher than the current FSR of 1.5:1 that applies to the site under the BBLEP 2013. The information submitted as part of the Modification Request provides no justification for this substantial increase in FSR. Coupled with the proposed significant increase in building height, it is clear when observing the relevant development standards of the BBLEP 2013 that the proposal would result in significant overdevelopment of the site.

Consequently the Modification Request is not 'minor' in nature, as described in the Modification Report prepared by Urbis. If the development were to be approved in the form set out in the Modification Request - particularly when comprising such a deviation from the original Part 3A approval - Council's development standards for the locality would come under immediate pressure

to be amended. Such an approval by the NSW government outside the scope of Council's LEP controls could result in unnecessary and premature reviews of development standards in the locality, and elsewhere in the Bayside LGA.

The proposed modification to the current approval should not prevail over the development standards of the Botany Bay Local Environmental Plan 2013, which is the instrument that informs the community's expectations about site development and planning outcomes, and the indicator of changes to planning outcomes. It is less than five years since the commencement of the BBLEP 2013, and no master planning has been undertaken to review the zoning and development standards that have applied to the site and broader locality since its inception. Therefore, the Modification Application should not be supported as it is inconsistent with the previously tested and endorsed planning controls.

LEC Determination [2015] NSWLEC 12

Approval has previously been granted by the NSW Land & Environment Court (LEC) for a maximum building height of approximately 30 metres at the site, which exceeds the maximum height of building of 16 metres identified for the site under the BBLEP 2013. Similarly, the FSR of 2.039:1 approved under that LEC determination significantly exceeds the permissible FSR of 1.5:1 for the subject site. Council's development standards have not been amended to respond to the LEC determination. It is noted that there has been no additional studies or master planning undertaken by Council, in consultation with stakeholders, to inform an appropriate long term vision, development densities and development standards in the locality.

The modification now seeks to further increase the FSR to 2.49:1, which, if approved, will almost double the applicable FSR for the site. It is noted that the increase in FSR is for the purposes of residential accommodation, further increasing the imbalance of land use toward residential in a Local Centre, where the primary function is retail.

SEPP 65 – Apartment Design Guide

It is noted that the proposed modification to Building B1 would result in non-compliance with the building separation distance required by the Apartment Design Guide (ADG). Consideration should be given to either a revised building design to achieve compliance; or the inclusion of adequate mitigation measures in the design to ensure that the amenity of adjoining residential development is not unreasonably impacted.

Amenity impacts

The proposed changes in height will have a significant impact on the amenity of Evans Avenue. An Active Street Frontage applies to Evans Avenue under the Botany Bay Local Environmental Plan 2013. The potential for an active street frontage along Evans Avenue will be compromised when this area is overshadowed for most of the day during winter. Reference is made to the overshadowing diagrams (Sheet no S75W 130012) which indicate that both the Northern and Southern sides of Evans Avenue will be overshadowed for most of the day during winter.

Botany Bay Development Control Plan 2013

Apartment design

All 3-bedroom apartments in Building B1 are to demonstrate compliance with *Part 4C.4.2 - Family Friendly Apartment Buildings* of the Botany Bay Development Control Plan 2013 (BBDCP 2013).

Traffic, Access & Car-parking

The modification seeks approval for an additional twenty-one apartments and an increase of 467 sqm of Gross Floor Area (GFA). (it is noted that approximately 11000sqm of additional floorspace is sought however, the number of apartments, car parking spaces and identified amount of retail floorspace does not equate to that figure. As previously noted in this submission Council seeks clarification of this issue so it can make fully informed comment). The following additional car parking would be required under the BBDCP 2013:

Use	No of apartments / GLA	Car parking rate	Car parking required
Studio/ 1 bedroom	8	1 space/ studio or one (1) bedroom dwelling.	8
2 & 3 bedroom	13	2 spaces / two (2) or more bedrooms dwelling.	26
Visitor spaces		1 per 5 apartments	4
GLA	467m ²	6 per 100m ² of GLA*	28
Total			66

*RTA Guide to Traffic Generating Developments - Version 2.2 (RTA Guide)

The modified proposal provides for an additional seven spaces to that of the Part 3A approval, resulting in a shortfall of 59 spaces from the amount of car parking required by the BBDCP 2013 and the RTA Guide. Council does not support such a substantial shortfall in car parking, especially when considering that the site is a Local Centre that experiences traffic movements well beyond that of a residential area.

The Environmental Assessment Report (EAR) states that the approved development and modification will rely upon public transport at Gardeners Road to service the shortfall in car parking provision. In their submission in relation to the original proposal, Sydney Buses stated that:

"...These services (i.e. Route 301, 303 and 343) are already operating at capacity during the AM peak period. Any additional patronage growth would require additional trips to be funded by Transport for NSW. The consideration and cost implications of adding additional trips to cater for patronage growth should be discussed with the Transport for NSW Bus Planning Group."

Given that bus services are already operating at capacity in the locality, the argument to justify a reduction in car parking provision by the availability of public transport is not supported. A shortfall of 59 car parking spaces is a substantial shortfall, given that public transport services are already at capacity. The modification is not supported on this basis alone.

Due to the intensity of existing development as noted above, adjoining local roads currently experience significant traffic congestion and pedestrian/ vehicular conflict. An increase in the FSR from 2.039:1 to 2.49:1 will place further pressure on the existing road network, introduce traffic safety risks and greater conflicts between vehicles and pedestrian/cyclists.

Given the likely increase in traffic and demand for public transport, the proponent and DPE need to ensure that there is sufficient capacity in the road network and bus services, to cater for the proposed development.

Voluntary Planning Agreement

If Council was the Relevant Planning Authority (RPA) for a proposed development of this scale, it would be expected that the applicant would discuss the possibility of a Voluntary Planning Agreement (VPA) to support the proposal. A VPA for this site could deliver significant public benefits to the community, and could include elements like open space and recreation improvements, and upgrades to pedestrian and cyclist networks in the locality. Council is unaware if DPE have discussed any proposed community benefits to be delivered by the original Part 3A approval, as Council is not the RPA in this instance. Should any intensification sought under the Modification Application be realised through an approval by DPE, the community benefits to be delivered should be commensurate with the intensification of development proposed.

Conclusion

The Modification Request will have a detrimental impact on the active street frontage along Evans Avenue, comprising activity and passive surveillance in the vicinity of the site. An approval for a building height of 8 storeys and FSR of 2.49:1 would set an unwelcome precedent for similar developments in the locality, further undermining the planning controls that have been endorsed by Council and DPE under the BBLEP 2013. Council recommends that DPE rejects the Modification Request, given these fundamental issues which have broader planning implications.

The preparation of a Master Plan and, potentially, a Planning Proposal would provide opportunity for broader stakeholder participation, rather than approving modifications to an already controversial development within a single site in Eastlakes Local Centre. Approval of the Modification Request is likely to create further community concern and create a situation where a single site outcome is used to leverage additional development opportunities beyond the current planning controls of the BBLEP 2013.

If you have any queries over the matters raised in this submission, please do not hesitate to contact Council's Project Officer, Howard Taylor, on 9366 3709 or at howard.taylor@bayside.nsw.gov.au.

Yours sincerely



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