

Ms Carolyn McNally
Secretary
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

28 June 2018

Dear Ms McNally

**Determination of Modification to Eastlakes Shopping Centre Project Approval
(MP 09_0146 MOD 1)**

1. Thank you for your Department's letter received on 13 June 2018 referring the above modification request to the Independent Planning Commission (the Commission) for determination. The Department has referred the modification request to the Commission for determination, because the Department received an objection from Bayside Council.
2. On 1 March 2018, the *Environmental Planning and Assessment Act 1979* (EP&A Act) was amended. The project is a transitional Part 3A project under Schedule 2 of the EP&A Act (Savings and Transitional and Other Provisions) Regulation 2017.
3. The ability to modify transitional Part 3A projects under section 75W of the EP&A Act is being discontinued however as the request for this modification was made before 1 March 2018, the provisions of Schedule 2 continue to apply.
4. Professor Mary O'Kane AC, Chair of Commission, nominated Mr John Hann (Chair) and Dr Peter Williams to constitute the Commission to determine the modification request.
5. The site comprises two parcels of land, known as the northern and southern sites, separated by Evans Avenue. On 19 September 2013, the then Planning Assessment Commission granted a project approval (MP 09-0146) for a mixed-use development on the northern and southern sites.
6. The site is zoned B2 Local Centre under the *Botany Bay Local Environmental Plan 2013* (BBLEP). The proposed modification request is permissible in the zone and is consistent with the land use zone objectives, which are:
 - *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
 - *To encourage employment opportunities in accessible locations.*
 - *To maximise public transport patronage and encourage walking and cycling.*
7. Crown Group (the proponent), is seeking to modify elements of the northern site, including:
 - increase gross floor area (GFA) by 1778.5m², comprising an additional 1591.8m² residential, resulting in additional 21 apartments and 186.7m² retail GFA;
 - built form amendments to Building 1, Building 1B and the retail frontage:
 - Building 1 – extend the podium towards Gardeners Road in a stepped form to accommodate additional retail GFA, and associated landscaping amendments;
 - Building 1B – replace the approved rectangular two-storey (above podium) building with an 8-storey (above podium) curvilinear form building, with a maximum height of

- 32 metres (RL 50.15m); and
 - retail frontage – curved awning and larger openings to Evans Avenue;
 - an additional level of basement car parking, increasing total car parking spaces from 216 to 280;
 - landscape plan amendments increasing total planting area from 1,251 m² to 1,640 m²:
 - additional ground level landscaping to the western boundary, reduced planting to the eastern boundary and planting over the structure along northern boundary at Gardeners Road; and
 - changes to landscaping at podium level, including relocation of swimming pool and changes to soft and hard landscaped areas;
 - retention of 12 street trees and removal of seven street trees on Gardeners Road; and
 - replace open base pylon sign with solid base sign on the Gardeners Road frontage.
8. The modification request was submitted by the proponent on 11 June 2017, followed by a Response to Submissions (RtS) on 21 November 2017, which amended the original modification request. On 5 and 28 March, and 11 May 2018, the proponent submitted further responses, including amended plans and additional information.
9. As part of its assessment, on 21 June 2018 the Commission met with the Department, the proponent and Bayside Council (council). All meeting notes are available on the Commission’s website. The Commission undertook an independent site visit, which included an inspection of the site, neighbouring properties and locality.
10. In determining this modification request, the Commission considered:
- all information provided by the applicant to the Department, including additional information, dated 11 July 2017, 21 November 2017, 5 March 2018 and 28 March 2018;
 - the Department’s assessment report, dated 12 June 2018 and the Modification of Project Approval - Instrument MP 09-0146;
 - Bayside Council submissions to the Department, dated 23 August 2017, 7 December 2017 and final submission, dated 11 December 2017;
 - 13 public submissions, seven government agency submissions and one submission from the Member for Heffron to the Department during the exhibition period for the modification request; and
 - section 75W of the EP&A Act, the relevant environmental planning instruments, which are listed on page 9 of the Department’s assessment report, the likely impacts to the environment, social and economic impacts in the Eastlakes locality, and the public interest.
11. The key issues for this modification request, and as considered by the Department include increased density, urban design and visual impacts, amenity impacts on neighbours and the locality, and traffic, parking and transport impacts. The Department’s assessment report states that the modification as lodged and exhibited, incorrectly identified the modification would result in an additional GFA of 10,816.4 m².
12. Council raised concerns in its submission to the Department, dated 23 August 2017, regarding impacts associated with building height, increased floor space ratio, site overdevelopment, amenity impacts, non-compliance with the Apartment Design Guide (ADG) and traffic, access and car parking. Council’s submission reflected its position in relation to the incorrect GFA, which it subsequently revised in its final submission to the Department, dated 11 December 2017:

“Our initial concerns were based on an assessment of 10,816 sqm increase in GFA. However, we note the proponent’s clarification about the proposed increase in GFA of

1778.5 sqm and consider this to be far more in keeping with the scale of the original Part 3A proposal...we now consider the modification minor in this context”.

13. Council stated in its meeting with the Commission, that there is a lack of evidence base or strategic framework to inform how Eastlakes Town Centre should be developed or to assess a development of this scale. It also raised concern regarding the increase in height of Building 1B.
14. The Commission did not receive any written comments from the public on the modification request.
15. The Commission requested clarification from the Department regarding the increase in height of Building 1B and whether the height increase applies to other approved buildings across the northern site. The Department clarified that the height increase being sought applies only to Building 1B and that the height of the other buildings across the northern site remain unchanged.
16. In relation to the key issues considered by the Department, Section 8 of the Department’s assessment report, dated 12 June 2018, provides the following relevant conclusions:
 - Density and height of Building 1B:
 - *“the proposed increase in density is minor and the proposal is consistent with the broader strategic planning objectives for the site...the Department is satisfied the proposal would not result in any unreasonable amenity or traffic impacts.*
 - *the proposed height of Building 1B is acceptable in the context of its town centre location and the other approved buildings on the site...the Department is satisfied the proposed building height would not result in in any unreasonable visual or amenity impacts on adjoining properties”.*
 - Urban design and visual impact:
 - *“the Department is satisfied the proposal would result in a high standard of architectural design.*
 - *with a reduction in the podium massing at the western end, the provision of replacement street trees as well as landscaping within the front setback, the Department considers the proposed modification would retain a similar appearance to Gardeners Road as the approved development”.*
 - Amenity impacts:
 - *“the modified development would still provide for active frontages along Evans Avenue.*
 - *Subject to the provision of additional landscaping along the western boundary, the Department is satisfied the proposal would not result in unacceptable visual impacts on the neighbouring development at 16 Evans Avenue.*
 - *the Department is satisfied the revised layout and secondary entrance to the shopping centre would not result in unacceptable impacts to the adjoining property.*
 - *Subject to updated plans demonstrating wall heights have reverted to the approved heights, the Department is satisfied the modified proposal would not result in additional visual or overlooking impacts to the adjoining property at 293 Gardeners Road, compared to the existing approval” (the Department’s assessment report states in error 293 Gardeners Road – the adjoining property is 193 Gardeners Road);*
 - Parking, traffic and transport:
 - *“the proponent amended the plans to incorporate an additional level of basement parking with 64 additional parking spaces...total parking demand for the north site is 272 spaces...and the proposal provides for 280 spaces;*
 - *The Department is satisfied the proposed modification would not result in any unacceptable traffic impacts”.*

17. After careful consideration, the Commission accepts the findings in the Department's report as described in paragraph 16 above because:
- the overall increase in density is relatively minor in the context of the project approval and the increase could be adequately supported on the site without giving rise to unacceptable amenity or traffic impacts;
 - the modification request is consistent with the site's land use zone objectives, as set out in paragraph 6;
 - the revisions to Building 1B minimise visual impact and provide an architectural point of interest;
 - variation to the ADG is acceptable and potential privacy impacts addressed, subject to the recommended condition requiring privacy screening and/or window treatments to the western elevation of Building 1B and privacy screening to the western end of balconies on Building 1B to prevent overlooking of 16 Evans Avenue;
 - Evans Avenue footpath would receive some sunlight during the day and the development still provides opportunities for active frontages within the retail element along Evans Avenue;
 - the landscape plan, subject to the recommended conditions, would result in an improved landscape design outcome on the northern site which requires reducing the height of the Gardeners Road street wall, increased planting along the western site boundary, and amendments to landscaping along the eastern boundary; and
 - on-site carpark capacity will be adequately addressed by an additional level of basement carparking.
18. As outlined in paragraph 17, the Commission finds that the proposed modification request is:
- of minimal environmental impact and satisfies section 75W of the EP&A Act; and
 - remains substantially the same development.
19. The Commission is satisfied that the findings in paragraph 17 demonstrate that the modification request is in the public interest because it accords with the statutory scheme for modifications and therefore represents ecologically sustainable development, orderly and economic use of the land and promotes good design and amenity of the built environment in accordance with section 1.3 (b), (c) and (g) of the EP&A Act.
20. The Commission has imposed conditions in the modification instrument for the following reasons:
- to prevent, minimise and/or offset adverse environmental impacts; and
 - to set standards and performance measures for acceptable environmental performance.
21. Therefore, the Commission has determined to approve the modification request, subject to the conditions in the attached modification instrument, for the reasons set out in paragraph 17:
- the proposed modification satisfies the requirements of section 75W of the EP&A Act; and
 - the proposed modification request is in the public interest.



Mr John Hann (Chair)
Member of the Commission



Dr Peter Williams
Member of the Commission