

ASSESSMENT REPORT

Nepean Health Precinct, Stage 1 Project Application MP 09_0220 MOD 3

1. INTRODUCTION

This report is an assessment of a request to modify the Stage 1 Project Approval for a site within the Nepean Health Precinct at Kingswood in the City of Penrith local government area.

The request has been lodged by Cityscape Planning and Projects on behalf of Aesthete No.3 Pty Ltd (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to extend the lapse date of the approval, delay the payment of developer contributions and update the site address.

2. SUBJECT SITE

The subject site is known as 11 Barber Avenue, Kingswood and forms part of the Nepean Health Precinct. The site is located approximately 700 metres (m) west of Kingswood train station, 1.5 kilometres (km) east of the Penrith Central Business District (CBD) and 27 km west of Parramatta CBD. The site location is shown in **Figure 1**.

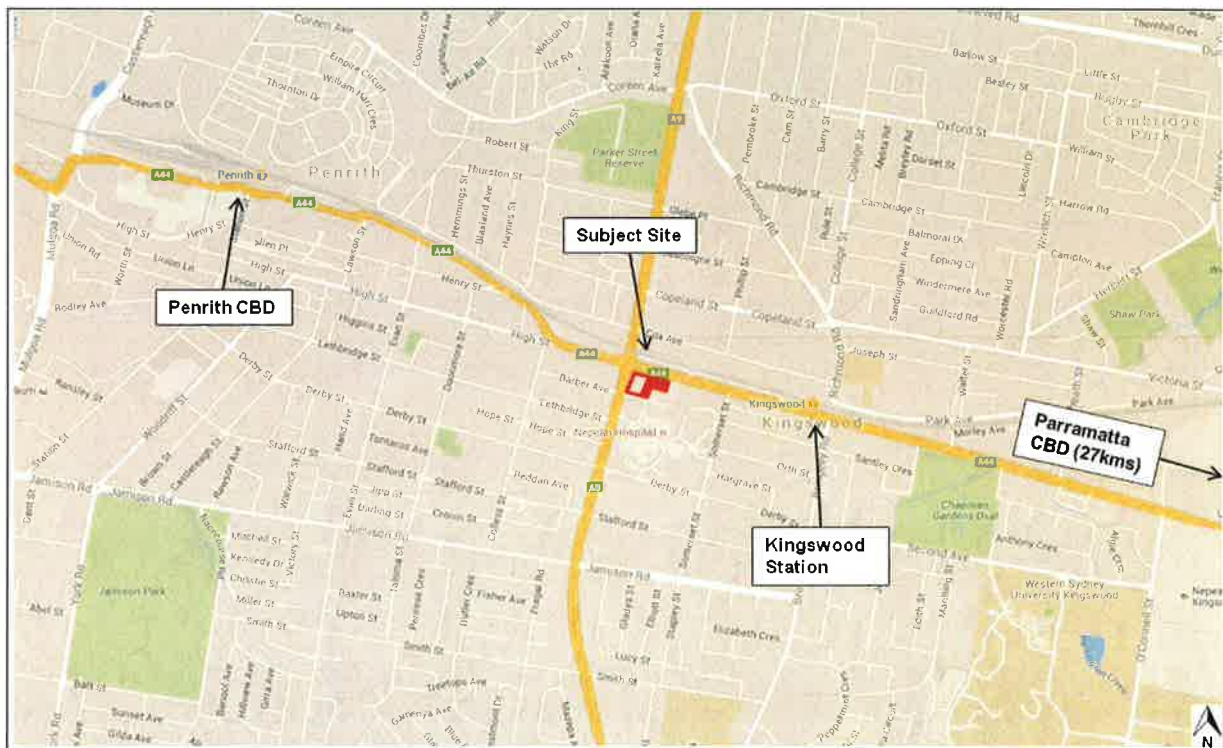


Figure 1: Project location (source: Google Maps)

The site is currently “L” shaped and has frontages to the Great Western Highway, Parker Street, and Barber Avenue and comprises five (5) allotments with a total area of approximately 9,571 m².

The surrounding area comprises a mix of medical, residential and industrial uses including:

- industrial land uses to the north of the site beyond the Great Western Highway and the railway corridor;
- the Nepean Hospital Campus and Private Hospital to the east;
- the Nepean Health Campus beyond Barber Avenue to the south; and
- single and two storey residential developments beyond Parker Street to the west.

This modification relates to the Stage 1 Project Approval development, which is approved for construction on one allotment, the eastern side of the site. The existing site layout and surrounding development is shown at **Figure 2** below.



Figure 2: Existing site and its surroundings (base image source: Google Maps)

3. APPROVAL HISTORY

On 17 August 2011, the Department approved a Concept Plan (MP 09_0197) and Stage 1 Project Approval (MP 09_0220) for a mixed use development on the site.

The Concept Plan comprises the redevelopment of the site for commercial, retail, serviced apartments and residential purposes, a maximum of 35,750 m² of gross floor area (GFA), building envelopes (including heights and floor space ratio), car parking and landscaping.

The Stage 1 Project Approval comprises the construction of two buildings for commercial, retail and serviced apartment purposes, car parking and landscaping site works and services.

Stage 2 works are required to be approved through a Development Application to Council under Part 4 of the EP&A Act.

The Concept Plan and Stage 1 Project Application approvals have both been previously modified on one occasion, as summarised in **Table 1**.

Table 1: Previous planning history

MOD no.	Summary of Modifications	Approval Date
Concept Plan MP 09_0197 MOD 1	Reduction of total GFA to 28,938m ² , height of Building A and car parking, reconfiguration of land uses in Buildings A and B.	18 April 2013
Stage 1 MP 09_0220 MOD 1	Reduction of total GFA to 18,250m ² , height of Building A and car parking, reconfiguration of land uses in Buildings A and B and modification to the levying of section 94 contributions.	18 April 2013
Stage 1 MP 09_0220 MOD 2	Delete car parking basement level 3, reduce height of Building A, provide 36 additional apartments, reduce scale of roof-top plant room, replace retail at lower ground level with car parking and commercial land uses at ground level of Building B with additional serviced apartments.	Withdrawn

Condition A6 of the Stage 1 Project Approval stipulates the consent will lapse five years from the date of the approval (being 17 August 2016) unless the works subject of any related application are physically commenced before that date.

Condition B15 of the Stage 1 Project Approval requires the payment of developer contributions prior to the issue of any Construction Certificate (CC).

4. PROPOSED MODIFICATION

On 9 June 2016, the Proponent lodged a section 75W modification application (MP 09_0220 MOD 3) seeking approval to:

- extend the lapse date of the Stage 1 Project Approval by two years from 17 August 2016 to 17 August 2018;
- delay the timing of the payment of developer contributions from prior to the issue of any Construction Certificate *to prior to the issue of a Construction Certificate for above ground works*; and
- update the site address, which is now referred to solely as 11 Barber Street, Kingswood (Lot 100 DP 701623).

The Proponent advises the modification is requested as:

- it has not physically commenced works in accordance with Condition A6, however it still intends to pursue the development of Stage 1;
- an extension to the impending lapsing date would allow the development to proceed;
- a delay to the payment of section 94 contributions would assist with development feasibility and would allow the developer to commence works earlier on site; and
- the modification would correct an error in the original determination, as the Stage 1 Project Approval incorrectly described the site as including all of the land to which the Concept Plan approval relates to, rather than the land identified as Stage 1 on the approved plans.

5. STATUTORY CONSIDERATION

5.1 Section 75W

The project was originally approved under Part 3A of the EP&A Act. Although Part 3A was repealed on 1 October 2011, the project remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act, and hence any modification to this Approval must be made under the former section 75W of the EP&A Act. The Department is satisfied the proposed changes are within the scope of section 75W of the EP&A Act, and does not constitute a new application.

5.2 Section 75Y

Former section 75Y of the EP&A Act provides a condition specifying a lapsing date on an approval may be modified to extend the lapsing period, and the Minister is to review the approval before extending the lapsing period. The Department has therefore reviewed the original Approval, as discussed in **Section 7** of this report.

5.3 Approval Authority

The Minister for Planning is the approval authority for the application. However, the Executive Director, Key Sites and Industry Assessments may determine the application under delegation as:

- the relevant local Council has not made an objection; and
- a political disclosure statement has not been made; and
- there are no public submissions in the nature of objections.

6. CONSULTATION

The Department made the modification application publicly available on its website, consulted with the City of Penrith Council (Council) and notified the owners of the remaining four allotments (which make up Stage 2 of the site). Given the minor nature of the proposed modification, it was not notified by any other means.

Council did not object to the proposal and provided the following comments:

- an extension of time is not permitted under Clause 95A of the EP&A Act;
- as developer contributions are unlikely to affect the viability of the development, the trigger for the payment for contributions should remain as prior to the issue of any Construction Certificate. However, if a deferred payment is to be permitted, it should only be to allow excavation, shoring, piling and underpinning prior to payment; and
- no objection is made to the amendment of the site address, subject to a separate application being required for Stage 2 works.

There were no **public** submissions received on the proposal. Healthscope, the owner of one of the adjoining lots, advised by telephone it would not be making a submission.

7. ASSESSMENT

7.1 Extension of the lapsing date of the development consent

Council has raised concern that an extension of time is not permitted under Section 95A of the EP&A Act. However, the Department notes Section 95A does not apply to Part 3A approvals and former Section 75Y of the EP&A Act provides the Minister may modify the lapsing period of a consent granted under Part 3A of the EP&A Act, subject to a review of the approval before extending the lapsing period.

The Department has reviewed the original approval and Council's original submission and is satisfied there are no circumstances which have materially changed since the original approval that would result in a different determination of the application today. In particular:

- *The planning context of the site*

The original application was assessed against the Penrith Local Environmental Plan (LEP) 1998 and although partly prohibited, the use was considered acceptable. The Penrith LEP 1998 has been superseded by the Penrith LEP 2010 and the site is now zoned B4 'mixed use'. The development is now entirely permissible within the zone. The approved development also significantly exceeded the Penrith LEP 1998 building height and floor space ratio controls for the site, but was nevertheless considered acceptable. Penrith LEP 2010 has significantly increased the permitted building heights and floor space ratio on the site and the development therefore now has a much greater degree of compliance with local planning controls than when it was originally assessed. The Department's previous assessment and conclusions on the acceptability of land uses, building height and floor space ratio within its original assessment remain valid and are strengthened by the changes to the local planning controls.

- *The physical context of the site*

There has not been a substantial change to the site's physical surroundings.

- *Changes to the development and environmental impacts*

The only aspects of the proposal sought to be modified as part of this application are the lapsing date, timeframe for payment of developer contributions and the site address. The current modification request does not seek to modify any other aspect of the development which would change the environmental impacts associated with the development.

The Department has reviewed the original assessment and considers the proposed land uses remain appropriate. The Department is satisfied an extension to the lapsing period will not result in any change to the Department's original assessment, or any additional environmental impacts, beyond those already assessed and approved. The Department is also satisfied the site remains suitable for the approved development and is consistent with the strategic planning context for the precinct.

The proposed modification would not alter the overall nature of the Stage 1 Project Approval as it would continue to achieve the same objectives as the original approval. The Department therefore recommends Condition A6 of the Stage 1 Project Approval be amended to provide a revised lapse date of seven years.

7.2 Section 94 Contributions

The proposal seeks to defer the timing of the payment of developer contributions from 'prior to issue of any Construction Certificate' to 'prior to the issues of Construction Certificate for above ground works'. The proposal does not include any amendment to the Statement of Commitments. The delay is requested in order to facilitate the commencement of the development.

Council has raised concern about the proposed change and states the contributions equate to approximately \$200,000 (0.2% of the Capital Investment Value) and therefore would not impact on viability of the development. Council has recommended amended wording for Condition B15 in the event the Department agrees to the deferral of the section 94 contribution payment, which is quoted below (additions in bold and underline):

B15 Lapsing of Approval

Prior to the issue of a Construction Certificate (excluding a Staged Construction Certificate for excavation, shoring, piling and underpinning) the Proponent is to pay monetary contributions to Penrith City Council in accordance with the following Section 94 Contributions Plan identified in the table below:

Contribution Plan Name	Amount
Cultural Facilities	\$10,713.60
Footpaths	\$6,998.40
Local Open Space	\$45,288.00
District Open Space	\$125,280.00
Neighbourhood Centre	\$11,836.00
Total	\$200,166.80

The Proponent has agreed to Council's proposed amended wording of Condition B15.

The Department considers the deferral of the payment of developer contributions represents a minor delay and would not jeopardise the delivery of Council's nominated improvements around the site. Further, the initial excavation, shoring and underpinning do not create any floor space on the site and therefore do not in themselves generate any demand for infrastructure and services funded through the section 94 contributions. The Department is therefore supportive of a deferment of payment of the contributions, as it will assist with facilitating the commencement of development on the site.

7.3 Change to Site Address

Schedule 1 and the definitions section of the Stage 1 Project Approval currently incorporates five lots in the site address, which is the same as the broader Concept Plan site.

The proposal seeks to update the site address to refer specifically to one lot (known as 11 Barber Avenue, Kingswood, or Lot 100 DP 701623) and to delete the reference to the remaining four lots. The Proponent advises the change is sought as it was only ever intended the Stage 1 approval is to relate to the Stage 1 site (11 Barber Avenue) as shown on the plans.

Council raised no objection to the correction of the site address provided works relating to Stage 2 will be the subject of a separate application.

The Department notified the owners of the other allotments and no objection was made to the proposed modification.

The Department notes the Project Approval relates to Stage 1 only and a separate development application would be required for any Stage 2 works. The update would ensure only the owner of the land on which the works were approved has responsibility and control of the Stage 1 Project Approval. The Department therefore considers the correction of the site address is acceptable and would ensure the approval instrument is consistent with the area designated as Stage 1 on the approved plans.

8. CONCLUSION

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes the proposed modification is appropriate on the basis that:

- the extension of time is consistent with section 75Y and would not result in any adverse impacts and does not alter the original Stage 1 Project Approval;
- delaying payment of developer contributions is justified and would not unreasonably affect delivery of infrastructure and services; and
- the update of the site address would ensure consistency between the approved plans and the instrument of approval.

Consequently, it is recommended the modification be approved subject to the recommended conditions.

9. RECOMMENDATION

It is RECOMMENDED the Executive Director, Key Sites and Industry Assessments as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report;
- **approves** the application under section 75W, subject to conditions; and
- **signs** the notice of modification (**Appendix A**).

Prepared by:
Michael Woodland (Consultant)



Natasha Harras
Acting Director
Modification Assessments



Anthea Sargeant 27/7/16
Executive Director
Key Sites and Industry Assessments

APPENDIX A: NOTICE OF MODIFICATION

A copy of the notice of modification can be found on the Department's website at:

https://majorprojects.affinitylive.com/?action=view_job&id=7700

APPENDIX B: SUPPORTING INFORMATION

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request

https://majorprojects.affinitylive.com/?action=view_job&id=7700

2. Submissions

https://majorprojects.affinitylive.com/?action=view_job&id=7700