



**Planning &
Infrastructure**

MODIFICATION REQUEST:

Lot 2 DP 748682

132-138 Killeaton Street, St Ives

MP10_0057 MOD 7 – Modification to include staged strata subdivision in the Project Approval

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

September 2012

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1. BACKGROUND

1.1 The Site

The site is located at Lot 2 DP 748682, 132-138 Killeaton Street, St Ives, situated on the southern side of Killeaton Street between Mona Vale and Yarrabung Roads in the Ku-ring-gai Local Government Area.

The site is L-shaped and has an area of 2.297 hectares that falls approximately 3 metres from the northern (Killeaton Street) boundary to the southern (rear) boundary. The site formerly accommodated a complex which comprised a monastery, college and chapel. The site has been largely cleared, with only the monastery, a two storey brick building and a small stable remaining (refer to **Figure 1**).

Killeaton Street is a two-lane local road with parking either side and forms a T-Junction with Mona Vale Road approximately 120 metres to the west.

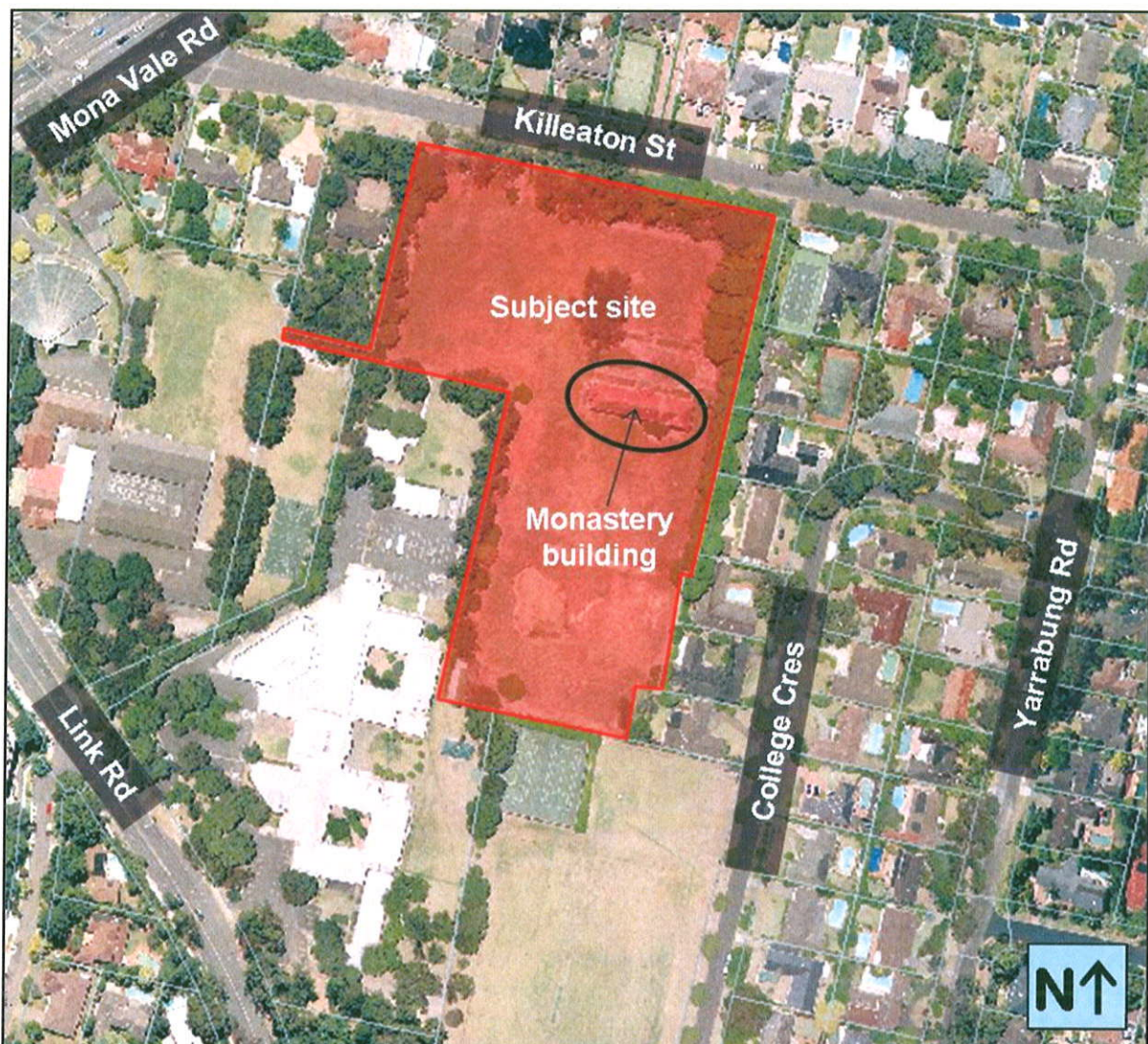


Figure 1: Site Locality

1.2 Previous Approvals

On 2 May 2011, the Planning Assessment Commission approved a Project Application (MP10_0057) for the construction of a residential development including demolition and excavation; construction of 6 residential buildings of 4-6 storeys in height comprising 298

apartments; adaptive reuse of the monastery building for communal facilities including pool and gymnasium; basement parking; and landscaping works, subject to conditions of consent.

On 6 August 2011, the Director-General approved amended plans to satisfy Condition B1A of the approval. The plans (including an additional basement car parking level) provided car parking numbers in accordance with the requirements for visitor and residential parking in the *Ku-ring-gai Development Control Plan (Town Centres) 2010*.

1.3 Previous Modifications

On 17 October 2011, the Acting Director General approved a Modification Application (MP10_0057 MOD 1) which involved the use of the existing driveway along the eastern boundary during construction.

On 2 December 2011, the Deputy Director-General approved a Modification Application (MP10_0057 MOD 2) for an amendment to Condition C34 and C35 to allow for the installation of a pumping system to discharge water from the basement post construction.

On 1 December 2011, the Planning Assessment Commission (PAC) refused a Modification Application (MP10_0057 MOD 3) for an amendment to Condition B12 to allow a reduction in the number of visitor car parking spaces.

On 20 February 2012, the PAC approved a Modification Application (MP10_0057 MOD 4) for amendments to building RLs, additional pergola structures and changes to rooftop areas.

On 29 February 2012, the PAC approved a Modification Application (MP10_0057 MOD 5) for modifications to the monastery building including changes to the layout of the ground floor to provide all of the communal facilities and two new residential apartments on the first floor.

On 23 May 2012, the Deputy Director-General approved a Modification Application (MP10_0057 MOD 6) which included the addition of pergolas to selected units in Blocks A, B and D.

On 30 August 2012, the Deputy Director-General approved a Modification Application (MP10_0057 MOD 8) proposing to modify Unit 449 on level 4 of Block A by adding a dressing room.

2. PROPOSED MODIFICATION

The application seeks to introduce the staged strata subdivision of residential buildings A, B, C, D, E, F and the adapted Monastery building which were approved under Project Application 10_0177. The purpose of the staging is to permit the sale of individual units as each building on the site is completed.

Staging of the strata scheme is proposed to be carried out in up to four stages. The first stage of the subdivision will consist of Buildings D, E, F and the Monastery. The application is accompanied by a Strata Development Contract which provides details of the Strata Scheme.

As the timing and order in which Buildings A, B and C will be completed is unknown, the proposal seeks the option to acquire separate strata schemes for each building if required. Flexibility in the staging of strata subdivision of Buildings A, B and C is reflected in the terms of the proposed Strata Development Contract.

Figure 2 depicts the buildings and their allocation to the proposed stages of strata subdivision.

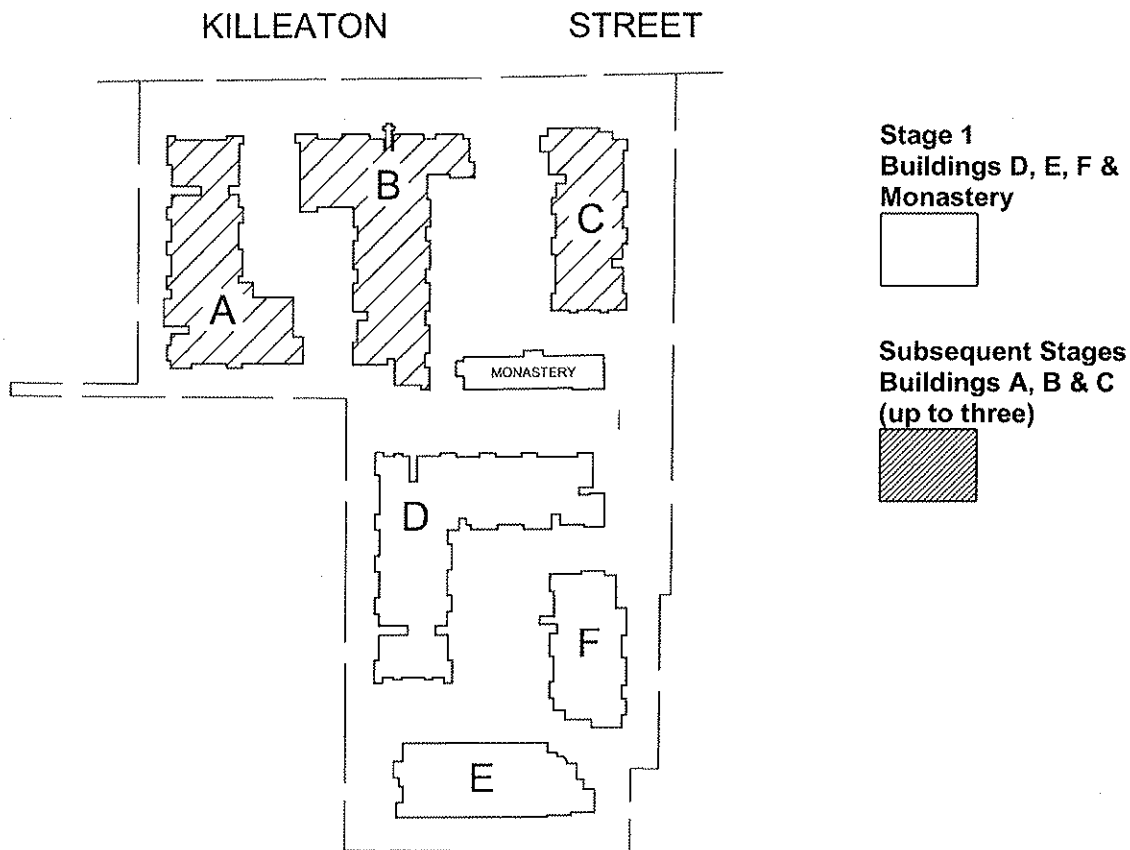


Figure 2: Site plan indicating footprints of the approved buildings and proposed staging

Condition A1 of the Project Approval is proposed to be amended to include reference to the proposed strata subdivision administration sheets and plans.

3. STATUTORY CONTEXT

3.1 Continuing Operation of Part 3A to Modify Approvals

In accordance with Clause 3 of Schedule 6A of the EP&A 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 the modification of the project under section 75W of the Act.

3.2 Modification of the Minister's Approval

The modification application has been lodged with the Director-General pursuant to Section 75W of the Act. Section 75W provides for the modification of a Minister's approval including "revoking or varying a condition of the approval or imposing an additional condition of the approval".

The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval. However, in this instance, the proposal seeks to modify conditions and impose new conditions in the Project Application approval and therefore, approval to modify the application is required.

3.3 Environmental Assessment Requirements

Section 75W (3) of the EP&A Act provides that the Director-General may notify the proponent of environmental assessment requirements (DGRs) with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.

In this instance, following an assessment of the modification request, it was not considered necessary to notify the proponent of environmental assessment requirements pursuant to Section 75W (3) with respect to the proposed modification, as sufficient information was provided to the Department to consider the application.

3.4 Delegated Authority

On 14 September 2011, the Minister for Planning and Infrastructure delegated his powers and functions under Section 75W of the Act to the Deputy Director-General 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.

No submissions have been received from the public and Council has not objected to the development. However, a political disclosure statement has been made for a previously related application.

Accordingly, the modification application is able to be determined by the Deputy Director-General, under delegation.

4. CONSULTATION AND SUBMISSIONS

In accordance with Section 75X (2) (f) of the EP&A Act, the Director-General is required to make the modification request publicly available. The modification request was made available on the Department's website and referred to Ku-ring-gai Council for comment.

4.1 Council's submission

Ku-ring-gai Council reviewed the proposal and raised no objection.

4.2 Public submissions

No submissions were received from the public.

5. ASSESSMENT

The Department considers the key issues for the proposed modifications are:

- consistency with the Project Approval;
- staging of the development; and
- additional conditions.

5.1 Consistency with the Project Approval

Despite some minor inconsistencies to the approved plans, the Department considers the proposed strata plans to be consistent with the Project Approval with regard to the number, type and general layout of units, building footprints and heights, the provision of the pool and gymnasium facilities and the provision of basement car parking spaces on the basis that:

- the inconsistencies are minor in scale as they relate to internal details of the buildings;
- they would not result in the creation of additional environmental impacts; and
- the proponent has submitted certified Construction Certificate drawings of the development depicting the footprint of buildings, the layout of units and the layout of the basement car park which is consistent with the proposed strata plan.

The Department is therefore satisfied that the proposed strata plan maintains an acceptable level of consistency with the Project Approval plans.

5.2 Staging of the development

The application seeks the strata subdivision of four buildings D, E, F and the adapted Monastery to be undertaken under a single strata scheme, identified as Stage 1.

As the timing for completion of the remaining buildings identified as A, B and C is unknown, flexibility is sought to allow separate strata schemes to be obtained for each of these buildings. The Strata Development Contract is therefore worded in a way that allows three more subsequent stages of subdivision to be carried out if required.

The Department raises no issue with the explanation of the proposed staging of strata subdivision provided in the proponent's response. Should the application be approved, the Department recommends the insertion of the following condition to allow for flexibility in the staging of strata schemes for Buildings A, B and C:

Staged Strata Subdivision

1. *Staged strata subdivision approval is given in relation to the whole of the land to which this project approval applies in accordance with the draft Strata Development Contract prepared for land identified as Lot 100 in Deposited Plan No. 1164957.*
2. *Notwithstanding the draft Strata Plan, the proponent may carry out staged strata subdivision for the buildings approved by this project approval in a manner consistent with the draft Strata Plan by preparing and lodging for registration:*
 - (a) *a strata plan which includes any or all of those buildings; and*
 - (b) *a strata plan(s) of subdivision for any of the buildings not initially included in that strata plan, to be determined by the proponent.*

5.3 Additional conditions

In addition to the staging condition, six other conditions are recommended to be included in the instrument of approval as they relate to the issue of the Subdivision Certificate. The conditions relate to:

- submission of plans of subdivision;
- easement / R.O.W provision and certification;
- car parking and storage areas;
- certification of as-constructed development;
- Sydney Water requirements; and

- the ongoing maintenance of facilities.

The conditions noted above are set out in the Department's Recommended Modifying Instrument of Approval in **Appendix C**.

6. CONCLUSION

The proposal seeks to amend Project Approval No. 10_0057 by introducing the staged Strata Subdivision of the approved buildings. The purpose of the proposal is to permit the sale of individual units as construction of each building is completed.

The development is proposed to be subdivided in up to four stages. Stage 1 includes Buildings D, E, F and the adapted Monastery building. Flexibility is sought to stage the Strata Subdivision of the remaining buildings which include Buildings A, B and C as it is unknown when or in what order each building will be completed. The wording of the proposed Strata Development Contract is designed to permit separate strata schemes to be acquired for each of these buildings if required.

In conclusion, the Department raises no issue with the proponent's request to modify the Project Approval subject to the addition of conditions to permit the staging of Strata Subdivision and acquisition of strata certificates. These conditions are outlined in **Appendix C**.

7. RECOMMENDATION

It is recommended that the Deputy Director-General:

- consider** the findings and recommendations of this report;
- approve** the modification request under delegated authority, subject to conditions;
- approve** the proposed Strata Development Contract; and
- sign** the attached Instrument of Modification for MP10_0057 MOD 7.

Endorsed by



Mark Schofield
A/Director
Metropolitan & Regional Projects South



Chris Wilson
Executive Director
Major Projects Assessments

7.9.12

Approved by

Richard Pearson
Deputy Director-General
Development Assessment & Systems Performance