



Your Reference: MP10\_0171 MOD 12  
Our Reference: NCA/23/2010  
Contact: Matthew Di Maggio  
Telephone: 9806 5419  
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Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001

Attention: Fiona Gibson

26 August 2016

Dear Ms Gibson,

**Section 75W Modification request to modify the Project Approval for the mixed use residential, retail and commercial development.**

I refer to the public exhibition of the above Major Project seeking approval for the modification of MP10\_0171 being MOD 12.

**PROPOSED MODIFICATIONS**

Council officers have reviewed the modification request and provide the following comments:

The modifications are as follows:

- The addition of 2 x 4 bedroom penthouse apartments to Level 54 of the west tower. Level 54 currently accommodates the plant for the building;
- All plant for the building is proposed to be relocated to Level 44;
- The addition of the two (2) apartments will increase the approved GFA of the proposal by 364m<sup>2</sup>, and the overall maximum GFA from 63,979 m<sup>2</sup> to 64,343 m<sup>2</sup>.

It is Council's understanding that the height and elevation of the buildings will remain unaltered by the modification.

**Voluntary Planning Agreement**

The current terms of the Voluntary Planning Agreement are as follows:

1. Associated with a previous modification (No 3) was a Voluntary Planning Agreement that, following exhibition, was endorsed by Council at its meeting of 11 November 2013. There are several components of the original signed VPA which are outlined below;
  - i) The surrender of the (50 year) lease over the Council owned carpark and demolition of the existing 'air-bridge' connecting the carpark to the

existing building. The lease would be surrendered upon construction reaching the podium level.

- ii) The transfer of a 720m<sup>2</sup> parcel of Council owned land to the for inclusion as part of their development site and return of this land to Council after it has been embellished as public domain.
  - iii) The provision of unrestricted pedestrian access through the carpark until such time as the lease is surrendered to Council. This will ensure pedestrian access is available to the foreshore during construction.
  - iv) Provision of an easement for access over land to ensure access is legally available to the rear of the adjacent business premises (328 Church Street).
  - v) Payment of a cash contribution to Council's Section 94A fund of \$2.76 million.
2. The approved development was the subject of a further modification (MP10\_0171 MOD 6) that was determined by the Department of Planning & Environment by way of approval on 29 June 2015. A condition was imposed requiring the entering into of an amended VPA for the delivery of public benefit. This resulted in a deed of variation being executed (5 May 2016) for the payment of an additional \$1,747,947.91 to be directed into Council's City Centre Section 94A plan for the delivery of public infrastructure.
3. Below is a table summarising the basis of calculation of the cash component of the VPA as originally endorsed and subsequently modified.

<b>Item</b>	<b>Value</b>
Section 94A contribution payable on existing approved development	+\$4,495,000
Additional S94A contribution due to increased cost of development (due to proposed modifications)	+\$1,801,945
Additional cash contribution to Council due to increased development yield	+\$3,367,050
Purchase of Council land (720sqm) – to be returned at no cost following completion development	+\$3,100,000
Additional cash contribution to Council due to increased development yield ( <b>MOD 6</b> )	\$1,747,947.91
<b>Total</b>	<b>+\$14,511,942.91</b>
Value of surrender of long term car park lease by	- \$10,000,000
<b>Balance payable to Council</b>	<b>+\$4,511,942.91</b>

## **CURRENT MODIFICATION APPLICATION**

4. The proponent has indicated a willingness to amend the Voluntary Planning Agreement with Parramatta City Council for the delivery of public benefits. The latest Section 75W Modification Application (MP10\_0171 MOD 12) was publicly exhibited by the Department of Planning and Environment between 8 August and 29 August 2016.
5. Council would generally expect any further development uplift to contribute towards the provision of public benefit using the principles and methodology applied previously and invites the proponent to consider this request.

## **PLANNING AGREEMENTS**

7. A planning agreement can be made under section 93F of the *Environmental Planning and Assessment Act, 1979* and is a voluntary agreement between Council and a land owner, under which the developer may be required to dedicate land, carry out works, pay a monetary contribution or provide other material public benefit, or any combination of these, to be used towards a public purpose. This may be in lieu of section 94 or s94A developer contributions, as a part substitution or an additional benefit.
8. The Act specifies that a public purpose includes the provision of public amenities or public services, the provision of affordable housing, the provision of transport or other infrastructure relating to land, the funding of recurrent expenditure relating to any of these, the monitoring of the planning impacts of a development and the conservation or enhancement of the natural environment.
9. Council has an adopted Planning Agreements Policy which sets out the principles governing such agreements; matters that council will consider in negotiating planning agreements; steps in the negotiating process; public probity; notification requirements and implementation. The *Environmental Planning and Assessment Act 1979 and Regulation 2000* set out the legal and procedural framework for planning agreements.
10. The negotiation of a planning agreement is at Council's discretion. Key principles of Council's Planning Agreements Policy are that:
  - Planning decisions will not be bought or sold through planning agreements;
  - Development that is unacceptable on planning grounds will not be permitted because of the benefits of the planning agreement;
  - The benefits of the planning agreement will bear a relationship to the application;
  - Council will not give undue weight to a planning agreement when making a decision on a development application;
  - Council will not improperly rely on its position in order to extract unreasonable public benefits under planning agreements.
11. In this circumstance the consent authority for any further modification to the approved development will be the Minister for Planning & Infrastructure with the

determination being carried out but the Planning Assessment Commission (PAC) operating under an instrument of delegation.

Overall, Council raises no objection to the proposed modifications on the grounds that the proponent can demonstrate that the amendments will not cause adverse impacts in terms of noise and the quality of the building's elevation and façade treatment is maintained.

Please note that Council Officers have not carried out a full comparison between the approved plans and the modification plans, and provide no comment on any other changes that may be in the modification plans which were not discussed within the written modification request.

Council appreciates the opportunity to comment on the above application.

Should you wish to discuss any of the above matters please call me on 9806 5419.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Di Maggio', written in a cursive style.

**Matthew Di Maggio**  
**Development Assessment Officer**  
**City of Parramatta**