

9 December 2022

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Dear James

MODIFICATION OF SSD-15882721 - 2 MANDALA PARADE, CASTLE HILL

This statement has been prepared on behalf of Deicorp Projects (Showground) Pty Ltd (the **applicant**) to accompany an application under section 4.55(1A) of the Environmental Planning and Assessment Act (the **Act**) to modify the above development consent.

The Approved Development

Development consent SSD-15882721 (the **consent**) was granted by the NSW Independent Planning Commission on 18 August 2022 for:

“Construction of the Doran Drive Plaza Precinct within the Hills Showground Station Precinct comprising:

- *Four residential towers above a retail/commercial podium*
- *Basement car parking*
- *Infrastructure upgrades, civil and stormwater works*
- *Outdoor public plaza (Doran Drive Plaza)*
- *Signage strategy*
- *Stratum subdivision”*

The consent applies to Lot 55 in DP 1253217.

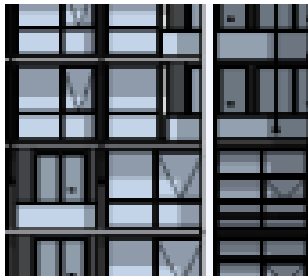

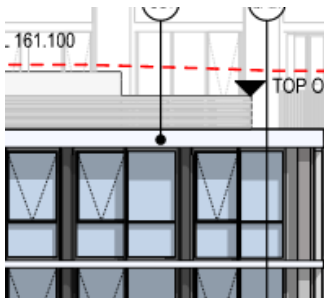
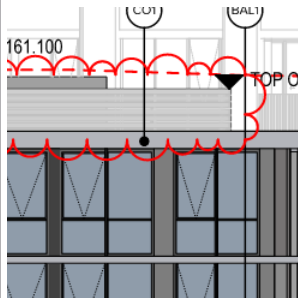



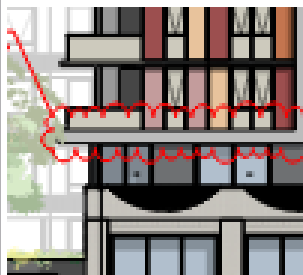
Proposed Modification

Approval is sought to modify the approved development to make various minor changes to the approved buildings including refinement of balustrades, plant screens, wall thicknesses, window proportions and slab edges that have arisen from further detailed design development.

Approval is also sought to modify the consent to facilitate the payment of development contributions in two stages to match the proposed construction staging.

The physical changes to the approved development are shown on the amended plans and illustrated in the following table.

Table 1 – Proposed physical modifications (typical).

Physical change	As originally approved	As proposed
Extent of balustrade adjusted for consistency.		
Plant screens increased in height by 350mm.		
Wall thicknesses increased slightly for constructability resulting in adjusted window proportions on Towers A and B.		
Slab edge adjusted for constructability.		

Conditions to be Modified

The application seeks to modify:

- The table in Condition A2 of the development consent, which identifies the approved plans. The table would be amended by updating, as relevant, the following plan references:

Table 2 - Plan references to be updated

Architectural drawings prepared by Turner			
Drawing Number	Rev	Name of Plan	Date
DA-110-020	38	Level 02	07.12.22
DA-110-030	33	Level 03	07.12.22
DA-110-040	32	Level 04	07.12.22

DA-110-050	33	Level 05	07.12.22
DA-110-060	34	Level 06	07.12.22
DA-110-070	32	Level 07	07.12.22
DA-110-080	34	Level 08	07.12.22
DA-110-090	34	Level 09	07.12.22
DA-110-100	32	Level 10	07.12.22
DA-110-110	32	Level 11	07.12.22
DA-110-120	32	Level 12	07.12.22
DA-110-130	32	Level 13	07.12.22
DA-110-140	32	Level 14	07.12.22
DA-110-150	32	Level 15	07.12.22
DA-110-160	32	Level 16	07.12.22
DA-110-170	32	Level 17	07.12.22
DA-110-180	32	Level 18	07.12.22
DA-110-190	32	Level 19	07.12.22
DA-110-200	31	Level 20	07.12.22
DA-110-210	22	Level 21	07.12.22
DA-210-101	15	North Elevation	07.12.22
DA-210-201	15	West Elevation	07.12.22
DA-210-301	16	South Elevation	07.12.22
DA-310-101	12	Internal Elevations Buildings A&B	07.12.22
DA-310-301	12	Internal Elevations Buildings A&C	07.12.22

- Condition B12, which in effect requires that prior to the issue of the first Construction Certificate the whole of the development contributions must be paid irrespective of the construction staging.

Condition B12 would be replaced with the alternate condition shown in **Appendix 1** that was provided by The Hills Shire Council.

Reasons for Modifications

As noted already, the proposed modification of Condition A2 to make various minor changes to the approved buildings has come about through further detailed design development including the input of specialist mechanical, structural and other consultants.

The proposed modification to Condition B12 is required to enable the payment of staged development contributions in accordance with the provisions of The Hills Contribution Plan – Showground Precinct No. 19 (the **contributions plan**). The contributions plan permits the deferred payment of development contributions provided that: *“The stages of development and relevant contribution payment for each stage must be clearly documented in the conditions of consent.”*.

The consent currently facilitates the staged construction of the approved development (see condition C2) and in this regard the applicant has notified the Department of its intention to carry out the development in two stages as follows:

Stage	Development to be carried out
Stage 1	<ul style="list-style-type: none"> Basement carpark accommodating 769 car spaces Retail/commercial podium containing 10,935m² of non-residential floorspace Residential towers A and B containing 11 x 3-bedroom apartments, 159 x 2 bedroom apartments and 70 x 1-bedroom apartments. Doran Drive Plaza
Stage 2	<ul style="list-style-type: none"> Residential towers C and D containing 32 x 3-bedroom apartments, 152 x 2-bedroom apartments and 6 x 1-bedroom apartments.

To avoid any doubt about whether the payment of the development contributions can be deferred to align with each construction stage, modification of Condition B12 is sought. Modification of the condition will enable the development to proceed in a timely manner.

Statutory Considerations

Section 4.55(1A) of the Act enables a consent authority to modify a development consent upon application being sought by the applicant or any other person entitled to the act on the consent, provided that the consent authority as part of the assessment process take into consideration the following matters:

Table 3: Section 4.55(1A) evaluation

Matters for consideration under Section 4.55(1A)	Response
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>The proposed design changes are barely perceptible (as illustrated in Table 1) and will have no impact on the design quality of the approved development, nor will they cause greater environmental impacts than the originally approved development.</p> <p>The slight increase in the height of the rooftop plant and plant screen does not cause additional overshadowing and nor is it visually intrusive due to the setback of the rooftop plant screens from the edge of the building.</p>
(b) It is satisfied that the development to which the consent as modified is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)	<p>According to Pearlman C.J. in <i>Schroders Australian Property Management Ltd v Shoalhaven City Council and Anor</i> (1999) NSWLEC 251, the term “<i>substantially the same development</i>” means “<i>essentially or materially or having the same essence</i>”. Accordingly, it is the substance of the proposal relative to the substance of the development as originally approved that determines whether the consent as modified remains substantially the same.</p> <p>The proposed modifications do not seek to change the nature and substance of the approved development. The overall use, height and scale of development on the site will remain materially the same as the approved development. The development (as modified), therefore, will remain substantially the same as the development that was originally approved.</p>

Matters for consideration under Section 4.55(1A)	Response
<p>(c) It has notified the application in accordance with:</p> <p>(i) The regulations, if the regulations require; or</p> <p>(ii) A development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent; and</p> <p>(d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</p>	<p>In this instance the consent authority is not a council and nor do the regulations require notification of the application.</p> <p>Given the nature of the proposed modifications and the absence of any environmental impacts, notification of the proposal is neither required nor warranted.</p>
<p>3. In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.</p>	
<p>(a) Environmental Planning Instruments and Development Control Plans</p>	<p>Since there are no substantive changes to the development proposed, the modified proposal remains consistent with the relevant provisions of these instruments as detailed in the original application and as subsequently assessed by the Department of Planning and Environment and the Independent Planning Commission in granting the consent.</p> <p>The rooftop plant screen remains below the maximum building height control for the site and is consistent with the building height shown in the concept development approval that applies to the site (21 storeys and 68 metres).</p>
<p>(b) The likely impacts of the development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.</p>	<p>There is nothing with respect to the modifications that would result in any environmental impact or affect the suitability of the site for the development as approved or as proposed to be modified. The proposed modifications will not have an impact on the height, bulk or scale of the development and will not cause additional overshadowing or other environmental impacts.</p>
<p>(c) The suitability of the site for the development.</p>	<p>The suitability of the site has been comprehensively addressed and considered by virtue of the granting of development consent. There is nothing with respect to the modifications that would affect the suitability of the site for the development as approved or as proposed to be modified.</p>

Matters for consideration under Section 4.55(1A)	Response
(d) The public interest.	No public interest issues arise because of the proposed modifications. The Independent Planning Commission's intentions when imposing conditions to preserve the public interest are not affected, since the proposed modifications continue to give effect to those general intentions, simply in a more practical and achievable way.

Conclusion

This modification application seeks to modify the approved development to make various minor design changes that have arisen through detailed design development and to facilitate the payment of development contributions in two stages to match the proposed construction staging as provided for in the relevant development contributions plan.

The modifications do not result in any adverse environmental impacts and the development will remain consistent with the approved application. The assessment of the modified proposal pursuant to the relevant evaluation criteria in section 4.15(1) of the Act does not materially alter the assessment undertaken in the original application. The combined changes maintain the integrity of the approved development and the intent of the conditions. Accordingly, the modifications are within the ambit of Section 4.55(1A) of the Act.

We see no reason therefore why the modifications should not be approved and commend this application to you.

Yours sincerely



Stephen Kerr
Executive Director

Appendices

1. Alternate wording for Condition B12 provided by The Hills Shire Council.

APPENDIX 1

PRIOR TO THE ISSUE OF CONSTRUCTION CERTIFICATE

1. Section 7.11 Contribution

The following monetary contributions must be paid to Council in accordance with Section 7.11 of the Environmental Planning and Assessment Act, 1979, to provide for the increased demand for public amenities and services resulting from the development.

Payments comprise of the following:-

Stage 1: Comprising the basement, podium and residential towers A and B

The following contributions are required prior to the issues of a Construction Certificate for Stage 1 of the Development: **\$4,830,220.39**

Development Category	Rate per m² of Total Floor Space: 12,514.00 m²	Total S7.11
Transport Facilities - Land	\$ 46.67	\$ 584,012.89
Transport Facilities - Capital	\$ 72.63	\$ 908,888.14
Water Management - Capital	\$ 12.64	\$ 158,164.68
Administration	\$ 1.15	\$ 14,330.80
Total	\$ 133.08	\$ 1,665,396.52

	Purpose: 1 bedroom unit	Purpose: 2 bedroom unit	Purpose: 3 bedroom unit	No. of 1 Bedroom Units: 70	No. of 2 Bedroom Units: 159	No. of 3 Bedroom Units: 11	Sum of Units	Total S7.11
Open Space - Land	\$ 4,502.04	\$ 6,302.84	\$ 7,803.52	\$ 315,142.67	\$ 1,002,150.96	\$ 85,838.67	\$ 1,403,132.30	\$ 1,403,132.30
Open Space - Capital	\$ 2,275.62	\$ 3,185.87	\$ 3,944.41	\$ 159,293.45	\$ 506,553.84	\$ 43,388.55	\$ 709,235.84	\$ 709,235.84
Transport Facilities - Land	\$ 1,119.69	\$ 1,567.55	\$ 1,940.78	\$ 78,378.04	\$ 249,241.13	\$ 21,348.61	\$ 348,967.79	\$ 348,967.79
Transport Facilities - Capital	\$ 1,742.38	\$ 2,439.33	\$ 3,020.12	\$ 121,966.37	\$ 387,853.40	\$ 33,221.30	\$ 543,041.07	\$ 543,041.07
Water Management - Capital	\$ 454.92	\$ 636.89	\$ 788.54	\$ 31,844.52	\$ 101,266.25	\$ 8,673.97	\$ 141,784.73	\$ 141,784.73
Administration	\$ 59.86	\$ 83.84	\$ 103.79	\$ 4,190.52	\$ 13,329.91	\$ 1,141.70	\$ 18,662.13	\$ 18,662.13
Total	\$ 10,154.51	\$ 14,216.32	\$ 17,601.16	\$ 710,815.57	\$ 2,260,395.50	\$ 193,612.80	\$ 3,164,823.87	\$ 3,164,823.87

Stage 2: Comprising residential towers C and D

The following contributions are required prior to the issues of a Construction Certificate for Stage 1 of the Development: **\$2,785,045.51**

	Purpose: 1 bedroom unit	Purpose: 2 bedroom unit	Purpose: 3 bedroom unit	No. of 1 Bedroom Units: 6	No. of 2 Bedroom Units: 152	No. of 3 Bedroom Units: 32	Sum of Units	Total S7.11
Open Space - Land	\$ 4,502.04	\$ 6,302.84	\$ 7,803.52	\$ 27,012.23	\$ 958,031.11	\$ 249,712.50	\$ 1,234,755.83	\$ 1,234,755.83
Open Space - Capital	\$ 2,275.62	\$ 3,185.87	\$ 3,944.41	\$ 13,653.72	\$ 484,252.73	\$ 126,221.23	\$ 624,127.68	\$ 624,127.68
Transport Facilities - Land	\$ 1,119.69	\$ 1,567.55	\$ 1,940.78	\$ 6,718.12	\$ 238,268.25	\$ 62,105.06	\$ 307,091.43	\$ 307,091.43
Transport Facilities - Capital	\$ 1,742.38	\$ 2,439.33	\$ 3,020.12	\$ 10,454.26	\$ 370,778.09	\$ 96,643.78	\$ 477,876.14	\$ 477,876.14
Water Management - Capital	\$ 454.92	\$ 636.89	\$ 788.54	\$ 2,729.53	\$ 96,807.99	\$ 25,233.36	\$ 124,770.87	\$ 124,770.87
Administration	\$ 59.86	\$ 83.84	\$ 103.79	\$ 359.19	\$ 12,743.06	\$ 3,321.30	\$ 16,423.55	\$ 16,423.55
Total	\$ 10,154.51	\$ 14,216.32	\$ 17,601.16	\$ 60,927.05	\$ 2,160,881.23	\$ 563,237.23	\$ 2,785,045.51	\$ 2,785,045.51

The contributions above are applicable at the time this consent was issued. Please be aware that Section 7.11 contributions are updated at the time of the actual payment in accordance with the provisions of the applicable plan.

Prior to payment of the above contributions, the applicant is advised to contact Council's Development Contributions Officer on 9843 0555. Payment must be made by cheque or credit/debit card. Cash payments will not be accepted.

This condition has been imposed in accordance with Contributions Plan No 19.

Council's Contributions Plans can be viewed at www.thehills.nsw.gov.au or a copy may be inspected or purchased at Council's Administration Centre.