



14022
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Carolyn McNally
Secretary
NSW Department of Planning
23-33 Bridge Street
Sydney NSW 2000

Attention: Amy Watson (Team Leader) + Matthew Rosel (Senior Planner)

**S96(1A) – MODIFICATION APPLICATION – SSD 6376
CONDITIONS B7, B8 AND B9 - WIND CONDITIONS
BLOCK 11, CENTRAL PARK**

On behalf of Frasers Broadway Pty Ltd, we hereby submit an application pursuant to section 96(1A) of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) to modify State Significant Development Application SSD 6376 relating to Block 11, Central Park.

The modification relates a request to delete conditions B7, B8 and B9 of Block 11 SSD approval (SSD 6376) in relation to wind levels. The conditions were imposed by the Planning Assessment Commission (PAC) and following further investigation, achievement of the conditions are neither feasible or appropriate.

This application identifies the consent, describes the proposed modifications and provides a planning assessment of the relevant matters for consideration contained in section 96(1A) and 79C(1) of the EP&A Act. It should be read in conjunction with the Environmental Impact Statement (EIS) prepared by JBA (submitted with the original SSD) and is accompanied by a revised Wind Impact Assessment prepared by Cermak Peterka Petersen (CPP (**Attachment A**)).

1.0 BACKGROUND

As required by Condition B7 and B9 an updated wind assessment has been prepared by Cermak Peterka Petersen (CPP) and is attached to this letter (**Attachment A**). CPP have been involved in the Central Park project since inception and have prepared all wind modelling assessments for the relevant applications.

The attached wind assessment analyses additional wind measures to reduce wind impact for the retail areas and for the O'Connor Street Park, as well as the outdoor play areas of the childcare facility. In particular, the amelioration measures included in condition B8 have been analysed.

1.1 Planning Assessment Commission – Conditions to SSD

Following the site inspection by the Planning Assessment Commission (PAC) of the original SSD, further clarification on the potential wind impacts and amenity/use of the open spaces was requested. A response was provided by the applicant as part of this assessment.

In their assessment report, the PAC states that the provision of open space is critical to the proposal and that this space must be pleasant and usable for the future residents and community. As such, an additional condition (Condition B7) was imposed by the PAC, with the intent of ensuring additional measures were incorporated in the development to reduce the potential impact of the wind in specified locations. The locations being O'Connor Street Park and retail areas.

Whilst condition B8 was included, the Commission was also of the opinion that the spaces in O'Connor Street Park and retail area should be to a 'pedestrian sitting' wind criterion, to ensure

that it is pleasant and useable for residents and the community. The same was applied to the Childcare Centre terrace via condition B9.

Whilst the intent of the condition of the PAC are undisputed, at the time the conditions were imposed, analysis of whether achievement of the pedestrian sitting option was feasible was not provided.

1.2 Background to the Wind Environment at Central Park

In the original Concept Plan (2006), the geometry and separation between Block 5C and Block 11 caused wind to be constrained and accelerated along O'Connor Street. Shifting the built form south in the SSD (and concurrent Concept Plan modification), and opening the space between Block 11 and Block 5C, enables wind to flow around the southern corners of Block 5C rather than being constrained and accelerated.

This change in the spatial relationship was fundamental to the Block 11 SSD design, and has contributed most significantly to improving the wind environment in this location of the Central Park Site.

2.0 PROPOSED MODIFICATION

This modification seeks to amend the wording or conditions B7, B8 and B9 of the existing SSD approval, in response to further wind analysis undertaken for the project. As they are presently worded they are not feasibly able to be satisfied. The proposed amendments to the conditions are set out below, with addition wind assessment included at **Section 3**.

Conditions proposed to be deleted are set out below:

B7

~~*Prior to the issue of any Construction Certificate, an updated wind assessment shall be submitted for the Secretary's approval. The wind assessment shall demonstrate what additional methods/treatments will be included so as to reduce wind impacts to ensure that the area outside the retail units fronting the O'Connor Street park would be comfortable for pedestrian sitting, and that the O'Connor Street park is comfortable for pedestrian sitting.*~~

B8

~~*Prior to the issue of any Construction Certificate details are to be provided and approved by the Secretary that demonstrate the measures that have been incorporated within the design in order to reduce the impacts of wind such as:*~~

- ~~*a) Additional large mature trees along O'Connor and Kensington Street;*~~
- ~~*b) External permanent or temporary fins perpendicular to the façade;*~~
- ~~*c) Planter boxes parallel to the façade; and*~~
- ~~*d) Additional trees within park areas.*~~

B9

~~*Prior to the issue of any Construction Certificate, an updated wind assessment shall be submitted for the Secretary's approval. The wind assessment shall demonstrate what additional methods/treatments will be included to reduce wind impacts to ensure that the outdoor play area for the child care facility is classified as comfortable for pedestrian sitting.*~~

3.0 CONSIDERATION OF ADDITIONAL MEASURES

The following measures, as recommended by existing Condition B8, have been considered in detail by CPP as part of the revised wind assessment. The effect on wind mitigation, and the net amenity consideration of the proposed measures is provided below.

3.1 Additional large mature trees along O’Connor and Kensington Street and in park areas

To improve the overall wind conditions in these areas to a pedestrian sitting criterion would be exceptionally difficult as the wind conditions through this area are governed by the larger surrounding buildings, particularly Blocks 5C and 2 to the north of the site, and Blocks 1 and 4N on the north-west corner of the site, interacting with the relatively strong Sydney wind climate.

Incorporating additional large trees within the O’Connor Street Park and Kensington Street frontage would have a negligible effect on the wind environment in this location, given these effects of Block 5C to the north.

To meet the pedestrian sitting criterion identified by the PAC, a significant number of trees would need to be planted such that it would cover the majority of the ground plane, and form a visual barrier surrounding the site (much like a dense windrow). Even then, planting at this scale may not be sufficient to achieve this criterion in O’Connor Street Park identified by the PAC.

Crucially, whilst a minor improvement on the wind environmental may result from such amendments, additional mature planting (particular if an evergreen species was selected) would significantly reduce the level of solar access received to this space, that at present is a key feature of the amenity of the space. In this regard, we note the comments in the PAC Assessment report for the provision of pleasant, usable and high amenity open space being critical to the proposal.

Given the negligible reduction in wind that would result from planting additional trees, and the subsequent impact to solar access, planting of additional mature trees would result in a net amenity reduction in this location.

3.2 External permanent or temporary fins perpendicular to the façade

Porous screens extending perpendicular to the façade of the retail tenancies, would provide local shielding for patrons in this location, and have been added to the façade design.

CPP recommends that the porous screens have an open area of up to 30% to provide maximum benefit to patrons without causing a high velocity gradient at the edge of the screens. Revised Architectural plans, illustrating the location and design of these screen are included at **Attachment B**.

3.3 Planter boxes parallel to the façade

Given the inclusion of the vertical screens to the ground floor facade, the areas between will be suitable for pedestrian sitting without the addition of the parallel planter boxes.

Whilst planters parallel to the façade would provide some minor additional protection, they would need to be a minimum of 1.2 m high to be effective. Including planters and screen would enclose the space to any visual connection, surveillance, or activity within O’Connor Street Park.

Therefore, given the inclusion the vertical screens, planter boxes are not required in this location in order to achieve the pedestrian sitting criterion. Not including planter boxes will also improve the activation to and from the retail space, and provide a superior urban design and interface outcome.

3.4 Childcare

Wind conditions to the terrace of the Childcare Centre were measured in the SSD report without landscaping or perimeter balustrade for modelling reasons, and to provide a worst case scenario. Changes to the geometry of this level (between lodgement and determination) as well the inclusion of the balustrade, and landscaping would be expected to ameliorate the wind conditions to a ‘pedestrian sitting’ level.

4.0 WIND ASSESSMENT SUMMARY

Following the determination of the PAC and review of the conditions of approval (Condition B7, B8 and B9) additional wind modelling and testing was carried out by CPP. Interrogation and further investigation into options to reduce the wind impacts were considered, include those measures recommended in Condition B8.

The revised wind assessment confirmed that with the inclusion of additional vertical fins, the retail dining areas to O'Connor Street Park will achieve the pedestrian sitting criterion. Based on testing incorporating the final building geometry, balustrade and landscaping, the childcare terrace will also be suitable for pedestrian sitting.

Due to the wind conditions being governed by external factors to the site, achieving a pedestrian sitting criterion in the O'Connor street Park is not achievable. The various amelioration treatments were considered, along with the subsequent impacts that these may have including: impact to solar access (particularly in winter months); impact to the ground plane; and impact to visual connections, permeability and site lines.

As a result, additional wind amelioration measures to the O'Connor Street Park would result in a net amenity reduction to the O'Connor Street Park.

With the current proposed landscaping, the comfort rating of pedestrian standing is predicted. This level of amenity is typical of open park areas, such as Hyde Park, and the Domain, but also representative of smaller protected areas such as Wynyard Park, and Tumbalong Park. Most locations in the Sydney region would be require some level of local shielding to meet the pedestrian sitting criterion.

5.0 SECTION 96 OF THE EP&A ACT

The power to amend a development consent is found in section 96 of the EP&A Act. Section 96 is an independent facilitative power that is separate to the grant of a development consent.

The statutory requirements to be satisfied for the grant of consent to modify a development consent are set out in Section 96 of the EP&A Act. This modification application to development consent SSD 6376 is accordingly made under Section 96(1A) of the EP&A Act.

Pursuant to Section 96(1A) of the EP&A Act, the Minister or his delegate may modify development consent if:

- a) *it is satisfied that the development to which the consent as modified relates 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), and*
- b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- c) *it has notified the application in accordance with:*
 - i. *the regulations, if the regulations so require, or*
 - 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*
- d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

(emphasis added)

Section 96(3) of the Act requires the consent authority to take into consideration such of the matters referred to in Section 79C (1) as are of relevance to the development the subject of the application.

The proposed modification will not alter the nature of the approved development. It does not seek to change the approved uses, substantial built form, or any other key aspects of the approved SSD development. The modification seek deletion of specific conditions that are not feasible or appropriate to achieve. As a result, the proposed development remains substantially the same as the approved development and is of minimal environmental impact

6.0 ENVIRONMENTAL ASSESSMENT

Section 96(1A) of the EP&A Act states that a consent authority may modify a development consent if “it is satisfied that the proposed modification is of “minimal environmental impact”.

Consideration has been given to the provisions of S.79C(1)(a) – (e) of the EP&A Act 1979.

- the proposal does not alter the development compliance with the relevant planning controls and policies;
- the proposal does not alter the impacts of the original SSD, with exception of wind that has been explored above;
- the proposal does not alter consistency with the Central Park Concept Plan;
- any submission made to the proposal will be considered by the proponent;
- the proposal does not change the suitability of the site for the proposed development; and
- the modification is considered to be in the public interest.

7.0 CONCLUSION

In accordance with section 96(1A) of the Act, the proposed modifications will have no additional environmental impact and will result in a development that will be substantially the same as the originally approved development. The proposed modifications do not raise any additional environmental planning issues.

This Section 96 application seeks to delete conditions B7, B8 and B9 to facilitate the delivery of the project and provide a better planning outcome.

In accordance with section 96(1A) of the EP&A Act, the Minister or their delegate may modify the consent as:

- the consent, as proposed to be modified, is substantially the same development as that originally approved;
- the modifications result in an overall improvement to the building’s urban design response when compared against the outcome of complying with the conditions; and;
- the building’s compliance with the Concept Plan and key statutory plans and controls remains consistent with the original approved SSD.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification request. Should you have any queries about this matter, please do not hesitate to contact me on 9956 6962 or sgouge@jbaurban.com.au

Kind Regards,



Stephen Gouge
Principal Planner