



***Lot 231 Honeysuckle Drive, Newcastle  
Proposed by SBJ Planning (on behalf of  
231 Honeysuckle)***

***Modification of Condition B2  
MP05\_0166 Mod 2***

Modification of Minister's Approval  
Section 75W of the  
Environmental Planning and Assessment Act 1979

August 2007

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NSW Department of Planning  
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## 1. INTRODUCTION

On 6 July 2007, SJB Planning Pty Ltd (the Proponent) lodged an application to modify MP05\_0166 (**tag B**) pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* ("the Act"). The Proponent is seeking to modify Condition B2 of MP 05\_0166.

Condition B2 currently limits the encroachment of the child care terrace/outdoor play area to 6 metres into the floodway and view corridor easement at the western end of the site located at Lot 231 Honeysuckle Drive, Honeysuckle. The modification seeks to increase the encroachment of part of the terrace to 7m in order to comply with the minimum outdoor play area required for 50 children to be accommodated in the child care centre in accordance with the *Children's Services Regulation 2004*.

## 2. ORIGINAL APPLICATION

On 25 January 2007 the Minister approved the construction of a 7 level mixed use commercial office development comprising of two towers, basement parking, ground floor retail space, a childcare centre and commercial offices 2 Lot Torrens title subdivision on land owned by the Honeysuckle Development Corporation (HDC) at 20 and 22 Honeysuckle Drive, Newcastle (Part Lot 231, DP 1072217). A copy of the original approval is at **tag C**.

Specifically the approved development comprises:

- a. 3 levels of car parking (259 spaces);
- b. Two towers with a total gross floor area (GFA) of 15,558sqm (of which 14,446m<sup>2</sup> is commercial office space);
- c. 4 retail tenancies and the use of 1 tenancy for a child care centre comprising an area of 1,112sqm (GFA) (the fitout and operation of the child care centre was not part of this approval);
- d. Associated site improvements, landscaping and public domain works; and
- e. Subdivision of the land into two Torrens title allotments with associated easements and rights of use.

The original project cost of the development was \$40.52 million and is expected to create 120 full time equivalent construction jobs and 900 full time equivalent operational jobs. Fees were paid for the assessment of the Major Project based on the capital investment value (CIV) of the project.

Issues considered in the assessment of MP05\_0166 included:

- Easements;
- Floor space ratio;
- Building height;
- Contamination and remediation of the site for the proposed use;
- Flood management;
- Storm water management;
- Traffic and car parking.

These issues were either addressed by way of additional documentation lodged by the Proponent or via conditions of approval.

The condition subject to the current modification application is as follows:

### **B2 Amended Plans**

*The encroachment by the proposed ground floor level child care terrace / play area into the existing 20 metre wide floodway and view corridor easement at the western end of the site, is not to exceed 6 metres*

*at any point. Details are to be submitted to the Certifying Authority prior to the issue of a Stage 2 Construction Certificate."*

### 3. DESCRIPTION OF PROPOSED MODIFICATION

The modification seeks to amend condition B2 to enable an extension of the outdoor play area dedicated to the part of the building approved to accommodate the use as a childcare centre. It should be noted that the actual child care centre operation and fit out (if it has a Capital Investment Value less than \$5million) will be the subject of a separate Development Application to Newcastle City Council.

The need for an extension to the outdoor play area has been derived from the requirement of condition F18 in the approval for the development, which requires the capacity of the child care centre to be a minimum of 50 children. The *Children's Services Regulation 2004* requires a minimum of 7m<sup>2</sup> of usable outdoor play space per child that is exclusively for the use of children.

In order to satisfy the minimum outdoor play area requirement for 50 children a total outdoor play area of 350m<sup>2</sup> is required. Condition B2 of the approval however limits the outdoor play area to 340m<sup>2</sup>, which does not comply with the *Children's Services Regulation 2004* and therefore the child care centre will not meet its licensing requirements.

Modifying the wording of condition B2 will allow the outdoor play area to achieve the area required. To achieve this minimum area, the proponent seeks to extend the outdoor play area by 1m at the northern end of the terrace through modifying the wording of condition B2 as follows:

***"The encroachment by the proposed ground floor level child care terrace/ play area into the existing 20m wide floodway and view corridor easement at the western end of the site is not to exceed 7 metres at the northern end and 6 metres at the southern end, as shown on plan Z-1002 Revision E. Details are to be submitted to the Certifying Authority prior to the issue of a Stage 2 Construction Certificate."***

The resultant outdoor play area achieved as a result of modifying condition B2 will be 355m<sup>2</sup> therefore, will comply with the *Children's Services Regulation 2004*.

### 4. DEVELOPMENT CONSENT BACKGROUND

On 25 January 2007 the Minister approved the construction of a 7 level mixed use commercial office development comprising of two towers, basement parking, ground floor retail space, a childcare centre and commercial offices 2 Lot Torrens title subdivision on land owned by the Honeysuckle Development Corporation (HDC) at 20 and 22 Honeysuckle Drive, Newcastle (Part Lot 231, DP 1072217).

On 12 March 2007, SJB Planning (the Proponent) submitted to the Director-General a request for modification of the approved building to permit the following changes:

- Modification to Condition B1 to provide additional detail and clarification of the type of works involved at each stage, and also to defer the requirement for resolution of the external façade of the building from Stage 2 to Stage 3.
- Modification to Condition B27 to move the requirement for demonstration of compliance with the Australian Building Greenhouse Rating to Stage 3.

The modifications sought to conditions B1 and B27 subsequently impacted on the requirements of conditions B3, B4, B5 and B37. Changes to the wording of these other conditions were therefore also required for the approval to be coordinated.

On 3 May 2007, the Minister for Planning approved MP 05\_0166 Mod 1 to modify Conditions B1, B3, B4, B5, B27 and B37 as detailed in **tag D**.

## 5. STATUTORY CONTEXT

### Modification of a 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 the modification is required as the wording of 1 condition is being varied, which is consistent with the definition under clause 75W of the Environmental Planning and Assessment Act 1979.

### Environmental assessment requirements

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

Notification of the modification to Council was not required as the proposed modification is minor, will be consistent with the existing approval granted under Part 3A, and the proponent has already provided written agreement from the Council for the amendment proposed.

## 6. CONSULTATION AND EXHIBITION

Under Section 75W of the *Act*, a request for a modification of an approval does not require public exhibition. However, under Section 75X(2)(f) of the *Act*, the Director-General is to make publicly available requests for modifications of approvals given by the Minister. In accordance with Clause 8G of the *Environmental Planning and Assessment Regulation 2000*, the request for the modification was placed on the Department's website.

As the floodway and view corridor easement referred to in condition B2 benefits Newcastle City Council (Council), the proponent consulted with this authority prior to lodgement of this application. The Council advised in writing that it had no objection to the modification of the wording of condition B2 as proposed. Council's correspondence confirming this position is provided in **tag E**.

## 7. CONSIDERATION OF PROPOSED MODIFICATIONS

Condition F18 of the approval requires a minimum of 50 children to attend the child care centre. In order to satisfy the outdoor play area requirements in the Children's Services Regulation 2004 and to enable Council to approve the child care centre operations and fit out for 50 children under a future Development Application, a minimum of 350m<sup>2</sup> of exclusive play is required.

The current approval however only provides an exclusive outdoor play area of 340m<sup>2</sup> and therefore does not comply with the requirements of the Children's Services Regulation 2004 or will it enable compliance with condition F18 to be achieved. The proposed modification to condition B2 to allow a 15m<sup>2</sup> extension to a terrace 1.05m above the ground level would resolve this non-compliance with no adverse environmental or amenity impacts.

The outdoor terrace referred to as part of the modification is located within an easement located at the western end of the site that benefits the Council and the Honeysuckle Development Corporation. The purpose of this easement is to retain public access, retention of views, provide access for services and utilities and to limit obstruction of an existing floodway. The currently imposed condition allows the elevated outdoor terrace to encroach within this easement by no more than 6m at any point which reflects the amount of encroachment agreed to by the Council prior to determination of the original application.

The modification to the wording of condition B2 will allow the northern end of the terrace to extend 7m into the above mentioned easement as opposed to the current 6m restriction. On 10 May 2007 the Council advised the proponent in writing dated (**tag E**) that it has no objection to the modification proposed to condition B2 that would result in an increase in an impingement on the easement above mentioned.

Given the above reasons the proposed modification to condition B2 is satisfactory.

## 8. MODIFICATION TO CONDITIONS OF APPROVAL

The Department recommends that conditions of approval apply to the proposed modifications. These are included at **tag A**.

## 9. CONCLUSION

The proposed modifications are minor in detail and do not result in significant changes to the overall design and appearance nor to the conditions of the development as approved.

It is considered that the proposal, as modified, still achieves the same objectives as assessed for the originally approved under Major Project 05\_0166 and does not alter the overall nature, need or justification of the approved project.

## 10. DELEGATION

Under the instrument of delegation dated 7 June 2007, the Minister has delegated his functions under Section 75W of the Act relating to modifying Part 3A approvals to the Executive Director Strategic Sites and Urban Renewal.

Having regard to the Urban Assessments Guidelines for Delegates, it is considered appropriate that the application be determined under delegation.

## 11. RECOMMENDATION

It is recommended that the Executive Director Strategic Sites and Urban Renewal, as delegate of the Minister for Planning:

- (A) consider the findings and recommendations of this report;
- (B) approve the modification, subject to conditions, under Section 75W of the *Environmental Planning and Assessment Act, 1979*; and
- (C) sign the attached Instrument of Modification (**tag A**).

Prepared by:

Endorsed by:

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## Modification of Major Project Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

I, the Executive Director Strategic Sites and Urban Renewal, as delegate of the Minister for Planning, under Instrument of Delegation dated 7 June 2007, modify, under s.75W of the *Environmental Planning and Assessment Act 1979*, the Project approval referred to in Schedule 1 in the manner set out in Schedule 2.

Jason Perica  
**Executive Director**  
**Strategic Sites and Urban Renewal**

Dated this 31 day of August 2007

MP 05\_0166 MOD 2  
S07/00617

### **SCHEDULE 1**

Approval for construction of a 7 level mixed use commercial office development comprising of two towers, basement parking, ground floor retail space, a childcare centre and commercial offices 2 Lot Torrens title subdivision on land owned by the Honeysuckle Development Corporation (HDC) at 20 and 22 Honeysuckle Drive, Newcastle (Part Lot 231, DP 1072217).

## **SCHEDULE 2**

The above approval is modified as follows:

**(a) Delete Condition B2 and replace with the following:**

### ***B2 Amended Plans***

The encroachment by the proposed ground floor level child care terrace/ play area into the existing 20m wide floodway and view corridor easement at the western end of the site is not to exceed **7 metres at the northern end and 6 metres at the southern end**, as shown on plan Z-1002 Revision E. Details are to be submitted to the Certifying Authority prior to the issue of a Stage 2 Construction Certificate.