



NSW GOVERNMENT
Department of Planning

**ROYAL NEWCASTLE HOSPITAL
SITE – STAGES 1A/1B
*Proposed by Mirvac Projects Pty
Limited***

MP07_0133 MOD 2

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

August 2009

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1. INTRODUCTION

On 15 April 2009, Mirvac Projects Pty Limited (the Proponent) lodged an application to modify MP07_0133 pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* ("the Act"). The Proponent seeks to modify the plans and make certain amendments to the Conditions of Approval.

2. ORIGINAL APPLICATION

On 9 July 2008, the Minister for Planning approved the Major Project for the construction of Stages 1A & 1B (combined total of 8,475 m²) of the former Royal Newcastle Hospital (RNH) Concept Plan (MP05_0062). The site is located in Newcastle East on land fronting Shortland Esplanade, Church Street and King Street, in the Newcastle Local Government Area.

MP07_0133 granted consent to the development described in detail below:

- Mixed use residential, retail and hotel development comprising 146 residential apartments, 89 hotel suites and 1430m² of retail floor space in three buildings including:
 - 1 x part 5, part 6 and part 8 storey building overlooking Shortland Esplanade and Newcastle Beach and incorporating residential and retail uses (Building 1);
 - 1 x 8 storey residential and retail building overlooking a new plaza and new extension to King Street (Building 2);
 - 1 x 16 storey building incorporating studio apartments, a hotel and conference facility and retail uses (Building 3);
 - Public domain improvements incorporating a publicly accessible plaza and through site links, one from Pacific Street and one from King Street and both connecting to Shortland Esplanade and Fletcher Park / Newcastle Beach; and
 - 2 levels of basement car parking for 366 cars.

The original project has a Capital Investment Value (CIV) of **\$89.7million** and will create **250 full time** equivalent construction jobs and **100 full time** equivalent operational jobs.

3. SITE CHRONOLOGY

- On 3 January 2007, the Minister approved a Concept Plan for the mixed use redevelopment of the former RNH site (MP 05_0062).
- On 9 July 2008, the Minister approved MP07_0133 for redevelopment of the north east corner of the site (Stage 1A/1B).
- On 22 December 2008, the Executive Director Strategic Sites and Urban Renewal, as delegate of the Minister for Planning, approved MP07_0133 MOD 1, which included a number of changes including the installation of a gas powered generator to serve the hotel's requirements, a series of minor changes to each of the three approved buildings that did not involve changes to the approved Gross Floor Area, and amendments to a number of Conditions of Approval.

4. 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 a modification is not required if the project as modified would be consistent with the existing approval under this Part. In this instance, the proposed modification is consistent with the existing approval granted under Part 3A as it would not

result in any change to net Gross Floor Area or the public domain and would result in only minor changes to building facades. An Architectural Design Statement prepared by Tzannes Associates submitted with the Application indicates that the modified development would remain consistent with *State Environmental Planning Policy No.65 – Design of Residential Flat Buildings*.

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 modification as sufficient information was provided to the Department to consider the application.

5. 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.

6. DESCRIPTION AND CONSIDERATION OF PROPOSED MODIFICATIONS

The modifications are described in 2 letters from the Proponent dated 8 May 2009 and 22 June 2009 supported by amended drawings, BASIX Certificate and a State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development (SEPP 65) - Design Verification Statement from Alexander Tzannes of Tzannes Associates Architects. The modifications include minor amendments to the strata subdivision approval, 88B instrument and some changes to conditions. No changes to the height or total GFA are proposed. A plan of level 1 indicating the design changes is attached at **Tag B**. The architectural plans are attached at **Tag C**.

This modification seeks approval for the following amendments to the approved Major Project:

| | Modification Requested | Supported |
|--|--|-----------|
| <i>Dwelling Mix</i> | Change to dwelling mix resulting in an additional 11 units. Carparking remains unchanged at 366 spaces. | Yes |
| <i>Design Changes</i> | Vertical blades on northern and southern elevations to be replaced with adjustable louvers. Vertical blades to be removed from southern elevation. | Yes |
| <i>Substation</i> | Change to RL to meet Energy Australia's requirements. | Yes |
| <i>Landscaping</i> | Replace timber decking with paving. | Yes |
| <i>Conditions of approval:</i> | | |
| B13 – Landscape Plan | New condition as proposed by Dept. | Yes |
| E11 – Shared Facilities: Gym, Pool and Outdoor Facilities | Fix error in heading. | Yes |
| E12 – Preconditions to release of plan of subdivision | Delete point 2 to allow for staging of development, and insert as a new Condition F10 – Compliance with Conditions of Consent. | Yes |

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| F8 – Road Damage | Revised wording. | No. Alternative wording suggested by Dept. See table below. |
| F10 - Compliance with Conditions of Consent | New condition. See above. | Yes |
| F11 – Timber Decking | New condition. See above. | No. Wording inserted as a new point into condition B13. |

Dwelling Mix

The addition of 11 units is achieved through the conversion of 11x3-bedroom apartments into 11x2-bedroom apartments and 11x1-bedroom apartments in the Western core of Building 1 from ground floor level through to level 6. The proposed modification would increase the total number of units from 146 to 157.

The 1 bedroom apartments without balconies have their living room and bedroom facing north, providing solar access to these dwellings. The remaining 1 and 2 bedroom apartments all have private open space in the form of balconies. An amended BASIX certificate has been submitted with this application demonstrating compliance with the BASIX SEPP.

S.94A Contributions

Levies within Council's S.94A Plan for the subject site are based on construction cost. The Proponent has advised the Department via letter dated 12 August 2009 that the proposal would not increase the cost of carrying out development, therefore additional S.94 contributions would not be required. The Proponent's arguments can be summarised as follows:

- GFA and building envelope remain unchanged;
- Façade of the building has been simplified;
- Smaller apartments have less expensive materials to maintain their affordability; and
- Substation is no longer at basement level.

On this basis, the Department is satisfied that additional S.94 contributions would not be required.

Car parking

Despite the changes to dwelling mix, the total number of car spaces will remain at 366. Under the current approval, each of the 11x3-bedroom apartments has 2 car spaces. As a result of the proposed amendments, each of the 1 and 2-bedroom units will have 1 car space, consistent with condition E9 of the existing approval.

Design changes

The addition of 11 new apartments will result in minor architectural changes to the façade of building 1. The Proponent intends to replace the approved vertical blades with full height adjustable louvres. The vertical blades will also be removed on the southern elevation. This is considered acceptable as this elevation would receive only minimal direct sunlight.

A total of 5 of the 11 new one bedroom apartments have been provided without a balcony. This constitutes 3% of the total apartments. The SEPP 65 Design Verification Statement submitted with the modification argues that this will be satisfactory as the apartments would

receive good solar access (being north facing), good ventilation, benefit from communal open space at the ground floor consisting of private landscaped gardens, and enjoy the use of the adjacent beach and parks. It further argues that the impact of providing a balcony to these five apartments would be inconsistent with the composition of the façade. The proposed changes are therefore considered acceptable given the relatively small number of apartments affected by this modification.

The change to dwelling mix will also result in a wall being constructed to divide the ground floor courtyard belonging to the approved 3-bedroom apartment 32 between the newly created 2-bedroom apartment 32 and 1-bedroom apartment 74. No objections are raised in this regard.

The SEPP 65 Design Verification Statement submitted with this modification concludes that the proposed modifications will ensure that the architectural integrity of the original design is maintained.

Substation

The proposal elevates the substation (in the south west corner of the site near building 3) from mezzanine level to RL 22.300, which is just below Level 2, to meet Energy Australia's requirements. This is indicated on the elevations for Building 3 submitted on 3 June 2009. According to the approved Concept Plan (MP05_0062), the substation will be bounded to the south by future Stage 1C. This amendment is considered acceptable as its visible impact would be negligible.

Landscaping

To meet Energy Australia's requirements for truck access to the substation, the trees shown to the west of the western end of Building 1 will be incorporated into the design of the future stage.

This modification also includes replacing the timber decking to the south of Building 3 with paving, the same type as in the surrounding public domain. This change is requested to avoid issues identified by the Proponent with slip resistance and maintenance, particularly given the close proximity of the beach. The Proponent has suggested inserting a new condition at the 'prior to issue of occupation certificate' stage to incorporate this; however it is considered that a new part (part 4) should be added to Condition B13 Landscape Plan to address this. See table below for wording.

Proposed amendments to original Conditions of Approval

| Existing Approval | Requested Amendment | Department's Response | Supported |
|--|---------------------|--|-----------------------------------|
| <p><u>Condition B13 (as approved)</u></p> <p><u>Landscape Plan</u></p> <p><i>A detailed Landscape Plan is to be submitted incorporating the following:</i></p> <ol style="list-style-type: none"> 1. Locally native species to be at least 20% of plants by number. 2. Design of planter beds and boxes demonstrating capacity to support mature size of species selected, including details of soil volume and sub-surface design; and 3. Details of hard landscaping including paving, boundary treatments, and furniture and fittings in public areas. <p><i>The Landscape Plan shall be submitted to the Certifying Authority demonstrating compliance with this condition prior to the issue of a Construction Certificate for above ground works.</i></p> | | <p><u>Comment</u></p> <p>Rather than inserting a new condition F11 as proposed by the Proponent, it is considered that Condition B13 could be amended as follows:</p> <p><i>A detailed Landscape Plan is to be submitted incorporating the following:</i></p> <ol style="list-style-type: none"> 1. Locally native species to be at least 20% of plants by number. 2. Design of planter beds and boxes demonstrating capacity to support mature size of species selected, including details of soil volume and sub-surface design; and 3. Details of hard landscaping including paving, boundary treatments, and furniture and fittings in public areas. 4. <u>The timber decking shown to the south of Building 3 on drawing number L 8400J received on 8 May 2009 shall be replaced with paving to match the adjacent public domain</u> <p><i>The Landscape Plan shall be submitted to</i></p> | <p>Amended condition accepted</p> |

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| | | <i>the Certifying Authority demonstrating compliance with this condition prior to the issue of a Construction Certificate for above ground works.</i> | |
| <p><u>Condition E11 (as approved)</u></p> <p>Shared facilities: Gym, Pool and Outdoor facilities</p> <p><i>Prior to release of the Final Strata Plans for certification a Strata Management Plan shall be submitted to the Certifying Authority to state the gym, pool and outdoor facilities shall be available for all the residents and the patrons of the hotel. Access to these facilities will be controlled via an approved Strata Management Plan or an equivalent document that is endorsed as part of stratum or / and strata subdivisions</i></p> | <p>Modification Application requests the change of word to the heading of condition E12</p> <p>Shared facilities: Gym, <u>Spa</u> and Outdoor facilities</p> <p><i>Prior to release of the Final Strata Plans for certification a Strata Management Plan shall be submitted to the Certifying Authority to state the gym, spa and outdoor facilities shall be available for all the residents and the patrons of the hotel. Access to these facilities will be controlled via an approved Strata Management Plan or an equivalent document that is endorsed as part of stratum or / and strata subdivisions</i></p> | <p><u>Comment</u></p> <p>The spa replaced the pool in MP07_0133 MOD 1 but was not picked up in Condition E11.</p> | Amended condition accepted |
| <p><u>Condition E12 (as approved)</u></p> <p>Preconditions to release of plan of subdivision</p> <p><i>The plan of subdivision will not be issued until:</i></p> <ol style="list-style-type: none"> <i>1. All Section 94 contributions required to be paid have been paid.</i> <i>2. The property has been developed in accordance with plans approved by</i> | <p>Modification Application requests the deletion of paragraph 2 of condition E12</p> <p><i>Preconditions to release of plan of subdivision to allow for the staging of the development. This change would allow the property to be fully developed before issuing an occupation certificate, rather than prior to the plan of subdivision. The</i></p> | <p><u>Comment</u></p> <p>It is considered reasonable to delete point 2 and form a new condition in Section F. This will allow the staging of this development.</p> | Amended condition accepted |

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| <p>MP07_0133 and documentary evidence of compliance with all conditions of consent has been submitted to Council.</p> | <p>Proponent suggests this could become a new condition F10 <i>Compliance with Conditions of Consent.</i></p> | | |
| <p><u>Condition F8 (as approved):</u> Road Damage</p> <p>The cost of repairing any damage caused to Council or other Public Authority's assets in the vicinity of the subject site as a result of construction works associated with the approved development, shall be met in full by the Proponent prior to the issue of any Occupation Certificate.</p> <p>Note: Should the cost of damage repair work not exceed the road maintenance bond, Council will automatically call up the bond to recover the costs. Should the repair costs exceed the bond amount, a separate invoice will be issued.</p> | <p><u>Suggested Wording by Proponent:</u> Road Damage</p> <p>The cost of repairing any damage caused, the Council or other Public Authority's assets in the vicinity of the approved development which is the subject to a Occupation Certificate shall be met in full by the Proponent prior to the issue of the Occupation Certificate.</p> <p>The Proponent now acknowledges the Department's request that repair costs should be met at each stage.</p> <p>Typically damage is caused by trucks making deliveries to site due to their weight crossing over kerbs. As Building 3 uses the same access roads as Building 1 and 2, roads repaired at the earlier stages would be likely to require repeat repair at later stages.</p> | <p><u>Suggested Wording by Dept:</u> Road Damage</p> <p>(a) The cost of repairing any damage caused, <u>as a result of construction works, to council or other Public Authority's assets in the vicinity of any stage of the approved development which is subject to an Interim Occupation Certificate</u> shall be met in full by the Proponent prior to the issue of <u>that Interim Occupation Certificate.</u></p> <p>(b) <u>The cost of repairing any damage caused, as a result of construction works, to council or other Public Authority's assets in the vicinity of any stage of the approved development which is subject to any other Occupation Certificate, including a Final Occupation Certificate, shall be met in full by the Proponent prior to the issue of the Occupation Certificate including any Final Occupation Certificate.</u></p> <p>Note: Should the cost of damage repair work not exceed the road</p> | <p>Condition F8 to be amended as per Dept's suggestion.</p> |

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| | | <i>maintenance bond, Council will automatically call up the bond to recover the costs. Should the repair costs exceed the bond amount, a separate invoice will be issued.</i> | |
| | <p><u>Condition F10 as proposed by Proponent:</u></p> <p><u>Compliance with Conditions of Consent</u></p> <p><i>Prior to the issue of any final Occupation Certificate, the property shall be developed in accordance with plans approved by MP07_0133 and documentary evidence of compliance with all conditions of consent has been submitted to the PCA.</i></p> | <p><u>Comment</u></p> <p>Amendment supported to allow for a staged development.</p> <p>Condition F10 be inserted as a new condition of approval</p> | New condition supported. |
| | <p><u>Condition F11 as proposed by Proponent:</u></p> <p><u>Timber Decking</u></p> <p><i>The timber decking shown to the south of Building 3 on drawing number L_8400J shall be replaced with paving to match the adjacent public domain.</i></p> | <p><u>Comment</u></p> <p>This wording would be better suited to being inserted into Condition B13 Landscaping.</p> | New condition not supported. |

An amended BASIX certificate has been submitted with this application. Condition B3 BASIX Certificate Requirements has been amended to correctly address the updated certificate.

7. MODIFICATION TO CONDITIONS OF APPROVAL

The Department recommends that the conditions of approval be amended in accordance with Section 6 above and be incorporated in the consolidated conditions of consent.

8. CONCLUSION

The proposed modifications are generally minor in detail and do not result in significant changes to the overall design and appearance nor to the GFA or maximum approved height. Further, the Project Approval as modified remains consistent with the Concept Plan Approval (MP05_0062). It is considered that the proposal, as modified, is consistent with the approved development and still achieves the same objectives as assessed for the original approval under Major Project 07_0133. The proposed modification does not alter the overall nature, need or justification of the approved project, but allows for a greater variety of more affordable dwellings in the Newcastle LGA.

9. DELEGATION

Under the instrument of delegation dated 4 March 2009, the Minister has delegated her functions under Section 75W of the Act relating to modifying Part 3A approvals to the Executive Director, Major Projects Assessment. Having regard to the Instrument of Delegation, it is considered appropriate that the application be determined under delegation by the Executive Director, Major Projects Assessment.

10. RECOMMENDATION

It is recommended that the Executive Director, Major Projects Assessment, 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**).

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